



Development Services Department
Staff Determination Concerning Required Findings

<u>Project:</u>	Upper Boggy Creek Trail Phase 1
<u>Ordinance Standard:</u>	25-8-261(B)(3)(c) Critical Water Quality Zone (CWQZ) Development, limiting a hard surfaced trail located within the CWQZ to 12 feet in width unless a wider trail is designated in the Urban Trails Master Plan adopted by Council.
<u>Variance Request:</u>	Allow construction of a 14-foot wide multi-purpose trail in the CWQZ to connect with the MLK Capitol Metro Transit Station and serve as a major pedestrian route between MLK Blvd. and East 12th Street.

Include an explanation with each applicable finding of fact.

A. Land Use Commission variance determinations from Chapter 25-8-41 of the City Code:

1. The requirement will deprive the applicant of a privilege available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

Yes / **No** The applicant would not be deprived of a privilege available to the owner of a similarly situated property. Barring extenuating circumstances, any property located in the CWQZ would be subject to code requirements prohibiting a hard-surfaced trail wider than 12 feet to be located in the CWQZ.

2. The variance:
 - a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

Yes / **No** A 12-foot wide trail is allowed in the proposed location. The applicant was not able provide technical criteria or projected use data to demonstrate the need for a 14-foot wide trail. Therefore, staff cannot confirm that the variance is not necessitated by the construction method.

- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

Yes / **No** A 12-foot wide trail is allowed in the proposed location. The applicant did not demonstrate the need for a 14-foot wide trail. Therefore staff cannot confirm that the variance is the minimum deviation.

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

Yes / No The trail is being situated further away from the creek than the existing 4-foot wide trail, which is being removed to provide a greater vegetation buffer between the trail and the creek.

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

Yes / No The proposed trail is 2-feet wider than a 12-foot wide trail that is expressly permitted by the Land Development Code. However, for mitigation, the project proposes to remove the existing 4-foot wide hard surfaced trail along the southern half of the project, resulting in the proposed trail being equivalent to approximately 10-12 feet of additional trail width. Moreover, the location of the new trail, being further away from the creek, will provide a greater natural buffer zone between the trail activities and the creek.

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-422 (Water Quality Transition Zone), Section 25-8-452 (Water Quality Transition Zone), Article 7, Division 1 (Critical Water Quality Zone Restrictions), or Section 25-8-652 (Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long):

1. The criteria for granting a variance in Subsection (A) are met;

Yes / **No** Finding (A)(2)(a) has not been met. The applicant did not demonstrate the need for a 14-foot wide trail.

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

Yes / **No** The applicant did not demonstrate that a 12-foot wide trail would prevent a reasonable, economic use of the entire property.

3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.

Yes / **No** The applicant did not demonstrate that a 12-foot wide trail would prevent a reasonable, economic use of the entire property.

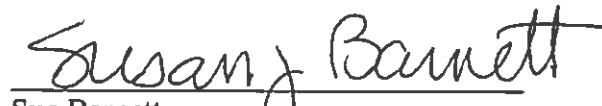
Staff determines that the variance request does not meet the findings of fact. If the Commission approves the variance, staff recommends the following condition. Applicant will remove approximately 19,520 square feet of asphalt at the south end of the proposed trail, on the south

side of 12th St., on the banks of Boggy Creek. The site, which is in the Critical Water Quality Zone and 25-year floodplain, is currently used for staging and spoils. Applicant will restore with native grassland seeding and planting per City of Austin Standard Specification 609S.6, including topsoil and seed bed preparation, temporary irrigation, and weed maintenance.

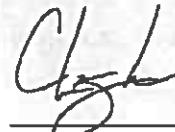
Environmental Review:


Pamela Abee-Taulli

Manager Environmental Review:


Sue Barnett

Environmental Officer:


Chuck Lesniak



MEMORANDUM

TO: Environmental Commission Chair Marisa Perales and Commissioners

FROM: Chuck Lesniak, Environmental Officer
Watershed Protection Department

DATE: September 12, 2017

SUBJECT: Recommendation on Variance Request for Upper Boggy Creek Trail (SPC-2016-0567C)

On your September 20, 2017 agenda is a request for a variance to Section 25-8-261(B)(3)(c) for the City's proposed improvements to the Upper Boggy Creek Trail to allow a fourteen foot wide trail within the Critical Water Quality Zone (CWQZ). This project will significantly expand and improve an existing pedestrian and bicycle commuter trail through East Austin providing a major north-south commuter trail that connects the central city with northeast Austin, including the MLK rail station.

The code specifies that hard surfaced trails located in the outer half of the CWQZ are limited to twelve feet in width "unless a wider trail is designated in the Urban Trails Master Plan (UTMP) adopted by Council." While the environmental reviewer has properly determined that the project does not meet the findings of fact, I am recommending approval of the variance request for the following reasons:

- Specific trail widths are not specified for any trails identified in the UTMP.
- While user data is not yet available, this trail will be the major commuter route through East Austin connecting multiple neighborhoods, job center, and transit centers and is highly likely to be heavily used, therefore justifying a trail wider than twelve feet.
- The existing trail will be replaced and the new trail will be moved farther from the creek than the current location.
- The project has agreed to mitigate impacts to the CWQZ by removing and restoring an existing road material and spoils storage area located in the 25-year floodplain and CWQZ.
- The request meets the original intent of the ordinance, which is to balance impacts to the creek buffer with the environmental benefits provided by significant alternative transportation transit corridors.

Please contact me at chuck.lesniak@austintexas.gov or 512.974.2699 if you have any questions.

Cc: Pamela Abee-Taulli, Development Services Department
Janae Spence, Public Works Department
William Power, Public Works Department



ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM

PROJECT DESCRIPTION

Applicant Contact Information

Name of Applicant	City of Austin Urban Trails Division
Street Address	505 Barton Springs Road
City State ZIP Code	Austin, Texas 78701
Work Phone	512-974-722
E-Mail Address	William.Power@austintexas.gov

Variance Case Information

Case Name	Upper Boggy Creek Trail
Case Number	SPC-2016-0567C
Address or Location	1719 Alexander Avenue
Environmental Reviewer Name	Pamela Abee-Taulli
Environmental Resource Management Reviewer Name	
Applicable Ordinance	LDC 25-8-261 Critical Water Quality Zone Development
Watershed Name	Boggy Creek
Watershed Classification	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Water Supply Suburban <input type="checkbox"/> Water Supply Rural <input type="checkbox"/> Barton Springs Zone

Edwards Aquifer Recharge Zone	<input type="checkbox"/> Barton Springs Segment <input type="checkbox"/> Northern Edwards Segment <input checked="" type="checkbox"/> Not in Edwards Aquifer Zones
Edwards Aquifer Contributing Zone	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Distance to Nearest Classified Waterway	Variable, Trail crosses Boggy Creek
Water and Waste Water service to be provided by	City of Austin
Request	The variance request is as follows (Cite code references: Chapter 25-8-261, Critical Water Quality Zone Development

Impervious cover	Existing	Proposed
square footage:	___61,855___	___61,855___
acreage:	___1.42___	___1.42___
percentage:	___7.7%___	___7.7%___
Provide general description of the property (slope range, elevation range, summary of vegetation / trees, summary of the geology, CWQZ, WQTZ, CEFs, floodplain, heritage trees, any other notable or outstanding characteristics of the property)	<p>The property is located along Boggy Creek between East 12th Street and MLK. The site is comprised of the Downs Mabson Fields park and through a recreation easement located within BTR Development Property for the trail to connect with the Cap Metro Transit Station. The site is flat and fairly open on the south end, moderately wooded along the creek and along the northern end of the subject property. The site is mostly within the CWQZ and 100-year floodplain. While there are small pockets of fringe wetland plants along the creek bed, it has been determined that they do not meet the definition of a wetland CEF. There are some heritage trees on the property, but there is no impact proposed to any heritage trees.</p>	

Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)	A hard surfaced trail is allowed by code within the CWQZ if it is limited to 12-feet in width. Given the proposed multi-use trail will connect with the Cap Metro transit station and serve as a major pedestrian route between MLK Blvd. and East 12 th street, a 14-foot wide trail is proposed as recommended by AASHTO Bicycle Facilities Guide for multi-use pathways with anticipated higher use.
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FINDINGS OF FACT

As required in LDC Section 25-8-41, in order to grant a variance the Land Use Commission must make the following findings of fact:

Include an explanation with each applicable finding of fact.

Project: Upper Boggy Creek Trail

Ordinance:

- A. Land Use Commission variance determinations from Chapter 25-8-41 of the City Code:
1. The requirement will deprive the applicant of a privilege available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

Yes / No Given the public park setting with need to provide intermodal transportation to the Transit Oriented District and Cap Metro Transit Station, a safe multi-use trail is needed as it would be for similarly situated development and park properties.
 2. The variance:
 - a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

Yes / No The variance is necessitated to provide safe pedestrian access alternatives through the park and to the Transit Station.
 - b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

Yes / No A 12-foot wide trail is allowed, and a 14-foot trail is proposed based on AASHTO design criteria for higher use areas.

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

Yes / No The trail is being situated further away from the creek than the existing 4-foot wide trail, which is being removed to provide a greater vegetation buffer between the trail and the creek.

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

Yes / No The proposed trail is 2-feet wider than a 12-foot wide trail that is expressly permitted by the Land Development Code. However, for mitigation, the project proposes to remove the existing 4-foot wide hard surfaced trail along the southern half of the project, resulting in the equivalent trail approximately 10-12 feet wide in net width. In addition, the location of the new trail, being further away from the creek, will provide a greater natural buffer zone between the trail activities and the creek.

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-422 (Water Quality Transition Zone), Section 25-8-452 (Water Quality Transition Zone), Article 7, Division 1 (Critical Water Quality Zone Restrictions), or Section 25-8-652 (Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long):

1. The criteria for granting a variance in Subsection (A) are met;

Yes / No See above.

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

Yes / No Denial of the variance prevents a reasonable safe use, which can be considered a reasonable economic use, of the property.

3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.

Yes / No The variance is the minimum deviation from the code to allow a reasonable economic and safe use of the property.

**Variance approval requires all above affirmative findings.

Exhibits for Commission Backup and/or Presentation

- Aerial photos of the site (backup and presentation)
- Site photos (backup and presentation)
- Aerial photos of the vicinity (backup and presentation)
- Context Map—A map illustrating the subject property in relation to developments in the vicinity to include nearby major streets and waterways (backup and presentation)
- Topographic Map - A topographic map is recommended if a significant grade change on the subject site exists or if there is a significant difference in grade in relation to adjacent properties. (backup and presentation)
- For cut/fill variances, a plan sheet showing areas and depth of cut/fill with topographic elevations. (backup and presentation)
- Site plan showing existing conditions if development exists currently on the property (presentation only)
- Proposed Site Plan- full size electronic or at least legible 11x17 showing proposed development, include tree survey if required as part of site or subdivision plan (backup and presentation)
- Environmental Map – A map that shows pertinent features including Floodplain, CWQZ, WQTZ, CEFs, Setbacks, Recharge Zone, etc. (backup and presentation)
- An Environmental Assessment pursuant to ECM 1.3.0 (if required by 25-8-121) (backup only)
- Applicant's variance request letter (backup only)





