

**CITY OF AUSTIN
Board of Adjustment
Decision Sheet**

DATE: Monday March 12, 2018

CASE NUMBER: C15-2017-0054

Y Brooke Bailey
 Y William Burkhardt
 Y Christopher Covo
 Y Eric Goff
 - Melissa Hawthorne (out)
 N Bryan King
 N Don Leighton-Burwell
 - Rahm McDaniel (out)
 Y Veronica Rivera
 N James Valadez
 Y Michael Von Ohlen
 Y Kelly Blume (Alternate)
 N Martha Gonzalez (Alternate)
 Pim Mayo (Alternate)

APPLICANT: Rick Rasberry

OWNER: Dustin Donnell

ADDRESS: 1615 WESTLAKE DR

VARIANCE REQUESTED: The applicant has requested variance(s) from Section 25-2-1176 (Site Development Regulations for Docks, Marinas, and Other Lakefront Uses) (A):

- A. (2) to increase the distance a dock may extend from no more than 20 percent of a channel width as measured by a line that is perpendicular to the centerline of the channel and that extends from the shoreline where the dock is located to the opposite shoreline, or in this case 28.1 feet (required, permitted) to 30 feet (requested); and
- B. (4) (a) to increase the width of a dock measured parallel to the shoreline of the lot or tract where the dock is proposed, and including all access and appurtenances, from 25.7 feet (required, permitted) to 30 feet (requested) in order to construct a new boat dock within the "LA" Lake Austin Residence zoning district.

BOARD'S DECISION: The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to November 13, 2017, Board Member Eric Goff second on an 9-2 vote (Board members Bryan King and Don Leighton-Burwell nay); POSTPONED TO NOVEMBER 13, 2017. November 13, 2017 POSTPONED TO DECEMBER 11, 2017 BY STAFF; DEC 11, 2017 POSTPONED TO JANUARY 8, 2018 (Re-notification needed)

RENOTIFICATION: The applicant has requested variance(s) from Section 25-2-1176 (Site Development Regulations for Docks, Marinas, and Other Lakefront Uses) (A):

- A. (2) to increase the distance a dock may extend from no more than 20 percent of a channel width as measured by a line that is perpendicular to the centerline of the channel and that extends from the shoreline where the dock is located to the opposite shoreline, or in this case 21.7 feet (required, permitted) to 30 feet (requested); and
- B. (4) (a) to increase the width of a dock measured parallel to the shoreline of the lot or tract where the dock is proposed, and including all access and appurtenances, from 25.7 feet (required, permitted) to 30 feet (requested) in order to construct a new boat dock within the "LA" Lake Austin Residence zoning district.

BOARD'S DECISION: Jan 8, 2018 The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to February 12, 2018, Board Member Don Leighton-Burwell second on a 11-0 vote; **POSTPONED TO FEBRUARY 12, 2018, Feb 12, 2018** The public hearing was closed on Board Member Michael Von Ohlen motion to Postpone to March 12, 2018, Board Member Melissa Hawthorne second on an 6-5 vote (Board members Brooke Bailey, Bryan King, Don Leighton-Burwell, Rahm McDaniel and James Valadez nay); **POSTPONED TO MARCH 12, 2018. March 12, 2018** The public hearing was closed on Board Member Michael Von Ohlen motion to Grant with condition that roof deck remain open, Board Member Brooke Bailey second on a 7-4 vote (Board members Bryan King, Don Leighton-Burwell, James Valadez and Martha Gonzalez nay); **MOTION FAILS DUE TO LACK OF VOTES, DENIED.**
EXPIRATION DATE: MARCH 12, 2019

FINDING:

- 1. The Zoning regulations applicable to the property do not allow for a reasonable use because: the existing boat dock on the property was designed and built more than 60 years ago and is very small in relation to boat dock designs approved now to safely accommodate.
- 2. (a) The hardship for which the variance is requested is unique to the property in that: the existing boat dock on the property was designed and built more than 60 years ago, other similarity situated boat docks already developed in Bee Caves area have been granted approved site plans and site plan exemptions from COA with variances to LDC regarding dock widths/lengths to realize safety privileges, applicant is unable to excavate into the property in order to bring boat dock into his property therefore has no other alternatives other than to request a variance.
(b) The hardship is not general to the area in which the property is located because: the property on opposite shoreline has claimed several vertical and horizontal feet of land/shoreline unlawfully, creating a special and unique hardship limitation on the LDC channel width rule provision calculations for the 1615 Westlake Drive property
- 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 variance is the minimum departure from the rules to achieve a safe design footprint arrangement necessary to accommodate the Owners two watercraft and would be on the lake



Leane Heldenfels
Executive Liaison



William Burkhardt
Chairman

EXHIBIT C1-3
March 20, 2018

Dear Board of Commissioners,

After our meeting on March 12th, 2018 and further review of the of the Board's comments from watching the videos of the case online, we are now modifying our variance request in a manner that both reduces the amount of variance that is sought and imposes a restriction on the height/use of the structure that would not otherwise be applicable. Accordingly, we are respectfully submitting this reconsideration request in a manner that we hope the Board can fully support.

Our variance application is hereby amended with the following:

1. LDC 25-2-1176(A)(2) -- Request to increase length of boat dock from 21.7' to 28.1' (reduced from the prior request of 30')
2. LDC 25-2-1176(A)(4) -- Request to increase width of boat dock from 25.7' to 27.0' (reduced from the prior request of 30')
3. Impose a restriction that the second story of the boat dock cannot be enclosed (reduced from currently having no restriction on height or use of the second story).

In an effort to keep this request as concise and direct as possible, we feel it is prudent to only note the reasoning and rational for each of the three amended/reduced/restricted aspects of the variance that is being sought under this reconsideration request.

1. Regarding LDC 25-2-1176(A)(2), Commissioner King previously stated that he would make his voting decision based off of where the shoreline "should be", and that the loss of channel width we have encountered from the unauthorized taking of land by the excavated material being dumped across from us should be excluded from that calculation in the Board's consideration. With the 2003 LIDAR imagery and GIS mapping, the channel was at a width of 140'6", which would allow for a 28.1 foot long dock to be built within existing code and without any variance needed. Accordingly, we are amending our request for the current variance to reduce from the previous 30' proposal down to 28.1 feet, which only requires a variance approval now because the channel width is no longer what it "should be" based on prior GIS data that has been provided previously, and which is again included along with this letter. This is the length

that we would have been permitted to construct without any variance based on 2003 imagery and GIS data, and we are only seeking the variance now as a reprieve from the hardship we have encountered by the unauthorized activity at the property across the channel from us.

2. Regarding LDC 25-2-1176(A)(2) and LDC 25-2-1176(A)(4), Commissioner Leighton-Burwell noted that he was a "no" for the 30' x 30' dock that was being requested previously, but that he understood the concerns for the overall safety of the dock and was trying to get to a point where he could approve the variance for something less than what we were seeking at the last hearing. Accordingly, we have amended our request to be less than the 30 x 30 previously requested, and in addition to the 13% reduction of our request for the length variance (from a 7.3 foot request to a 6.4 foot request) we have reduced our width variance request by 70% (from a previous 4.3 foot request down to the current 1.3 foot request), which we hope reaches the threshold for approval of something less than previously requested and still provides us appropriate safety and proper clearances around the vessels than without the variance.
 - a. One clerical item that we think is important to clarify is that my current boat is a 1999 Four Winns Horizon 240 (and these are where the dimensions that were dropped into the dock drawing diagram at the last meeting originated). I think we have been using the wrong terminology when we have previously referred to "modern watercraft" being of a larger size and nature. What we have meant to convey is that recreational boats from half a century ago (or longer) were much smaller than they are in this generation, and these older boats that are no longer common were often designed for 6 or fewer passengers and 18 feet or shorter in length. My boat is nearly 20 years old, so although I'm sure my boat would be flattered that we have previously referred to it as a "modern watercraft", we are really talking about a boat that is nearing the end of its useful life, and in fact my wife affectionately refers to it as the "S.S. Antique". By our use of the term "modern watercraft" in prior submissions, we simply mean boats of similar sizes to what have been common on Lake Austin and Lake Travis for several decades now.
3. Previously our request made no stipulation or restriction on the height or use of the second story of the dock and in the last BoA meeting it was noted that the Board would prefer a 2 story structure for lighting and safety purposes, but that the Board's preference would be for the second floor to only be a deck or roof structure that has no enclosure or roofing on it. We can agree to this request and modify our variance application to provide that the only construction to be above the floor level of the

second floor of the structure will be for necessary or required safety (such as railings and marine lights, etc).

Lastly, from studying the video of the March hearing again we understand that Commissioners Valadez and Gonzalez voted "no" for the prior request as proposed, but we couldn't ascertain the reason for their "no" vote so we are hopeful that these amendments to our request also allow them to be a "yes" to our request as amended herein. We would love to have unanimous support from the Board for our new and downsized variance request, and we believe that through the combination of the changes of 1, 2, and 3 above we will achieve a collaborative solution that meets the desires and intentions of at least the requisite majority of the Board (and hopefully the full unanimous support of the board) and also allows me, as the homeowner, to build a structure that allows reasonable use and the privilege of appropriate safety for my family when they are loading and unloading from the dock for the many years to come.

I again thank you for your consideration in this matter, and apologize for the amount of your time that this matter has consumed to date. If any of the Board have additional comments or suggested revisions or need further clarification I am 100% open to continuing the dialogue in the upcoming hearing.

Kindest Regards,

A handwritten signature in black ink that reads "Dustin Donnell". The signature is written in a cursive, flowing style.

Dustin Donnell
1615 Westlake Drive



CITY OF AUSTIN
Development Services Department
One Texas Center | Phone: 512.978.4000
505 Barton Springs Road, Austin, Texas 78704

Board of Adjustment General/Parking Variance Application

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

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

For Office Use Only

Case # _____	ROW # _____	Tax # _____
--------------	-------------	-------------

Section 1: Applicant Statement

Street Address: 1615 Westlake Drive

Subdivision Legal Description:

LOT 2 BLK A THE STUDDER SUBDIVISION

Lot(s): _____ Block(s): _____

Outlot: _____ Division: _____

Zoning District: City of West Lake Hills Jurisdiction

I/We Rick Rasberry, CESSWI on behalf of myself/ourselves as authorized agent for Dustin Donnell affirm that on Month March, Day 20, Year 2018, hereby apply for a hearing before the Board of Adjustment for consideration to (select appropriate option below):

Erect Attach Complete Remodel Maintain Other: _____

Type of Structure: Boat Dock

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

- 1. LDC 25-2-1176(A)(2) -- Request to increase length of boat dock from 21.7' to 28'.1'
- 2. LDC 25-2-1176(A)(4) -- Request to increase width of boat dock from 25.7' to 27.0'

Section 2: Variance Findings

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 supporting documents.

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.

I contend that my entitlement to the requested variance is based on the following findings:

Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

The existing boat dock on the property was designed and built more than sixty (60) years ago and is very small in relation to boat dock designs approved now to safely accomodate much larger modern-day watercraft sizes and confirgurations. The proposed variance is the minimum departure from the rules to achieve a safe boat dock design footprint arrangement necessary to accommodate the Owner's two (2) watercraft, and would be a commensurate footprint size of 30' X 30' commonly approved by COA in the area -- a safety priviledge enjoyed by other similarly situated properties to facilitate a resonable use.

Hardship

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

Other similarly situated boat docks already developed in Bee Creek area have been granted approved site plans and site plan exemptions from COA with variances to LDC 25-2-1176 regarding dock widths/lengths to realize safety privileges. Additionally, the property on opposite shoreline has claimed several vertical and horizontal feet of shoreline unlawfully, creating a special and unique hardship limitation on the 1615 Westlake Dr. property.

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

The property on opposite shoreline has claimed several vertical and horizontal feet of land/shoreline unlawfully, creating a special and unique hardship limitation on the LDC 25-2-1176 channel width rule provision calculations for the 1615 Westlake Dr. property.

Area Character

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 variance is the minimum departure from the rules to achieve a safe design footprint arrangement necessary to accommodate the Owner's two (2) watercraft, and would be a commensurate footprint size of 30' X 30' commonly approved by COA. The proposed footprint of dock (1006 square feet) would also be 16% smaller than the 1200 square feet maximum allowed by rule. The proposed improvements would in no way impair the use of adjacent conforming properties and the variance is heavily supported by the neighborhood.

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 in the City of Austin Land Development Code Chapter 25-6, Appendix A 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 reasonably require strict or literal interpretation and enforcement of the specific regulation because:

No parking variance is being sought with the boat dock remodel site plan application and the Owner's Residence is near the boat dock.

- 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:

N/A -- Boat Dock

- 3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

The proposed boat dock remodel would be sited in a consistent and congruent fashion similar to other area boat docks in Bee Creek -- the City's on the water assessment by APD did not find any navigational safety hazard with the proposed plans. Any denial of the requested variance could present a navigational risk associated with boats protruding from any smaller structure.

- 4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

The site (single family residence) is located within the City of West Lake Hills full jurisdiction and any approved variance would apply to the boat dock use only under the City of Austin's rule conditions.

Section 3: Applicant Certificate

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

Applicant Signature: Rick Rasberry Digitally signed by Rick Rasberry Date: 2018.03.20 17:21:46 -05'00' Date: 03/20/2018

Applicant Name (typed or printed): Rick Rasberry (Lake Austin Boat Dock & Shoreline Permits)

Applicant Mailing Address: 2510 Cynthia Ct

City: Leander State: Tx Zip: 78641

Phone (will be public information): (512) 970-0371

Email (optional – will be public information): rick@rickrasberry.com

Section 4: Owner Certificate

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

Owner Signature: Rick Rasberry Digitally signed by Rick Rasberry Date: 2018.03.20 17:22:31 -05'00' Date: 03/20/2018

Owner Name (typed or printed): Dustin Donnell

Owner Mailing Address: 1615 Westlake Drive

City: West Lake Hills State: Tx Zip: 78746

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 5: Agent Information

Agent Name: Rick Rasberry (Lake Austin Boat Dock & Shoreline Permits)

Agent Mailing Address: 2510 Cynthia Ct

City: Leander State: Tx Zip: 78641

Phone (will be public information): (512) 970-0371

Email (optional – will be public information): rick@rickrasberry.com

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

Additional Information Provided as Attachments:

EXHIBIT A -- 2003 VS 2012 GIS AERIAL DATA CHANNEL WIDTH & 2017 SITE PICTURES

EXHIBIT B -- SITE PLAN ILLUSTRATION 2003 LIDAR DATA VS 12/14/17 492.8 MSL

EXHIBIT C -- OWNER'S 3/20/18 LETTER OF REQUEST FOR BOARD RECONSIDERATION

2003 True Color

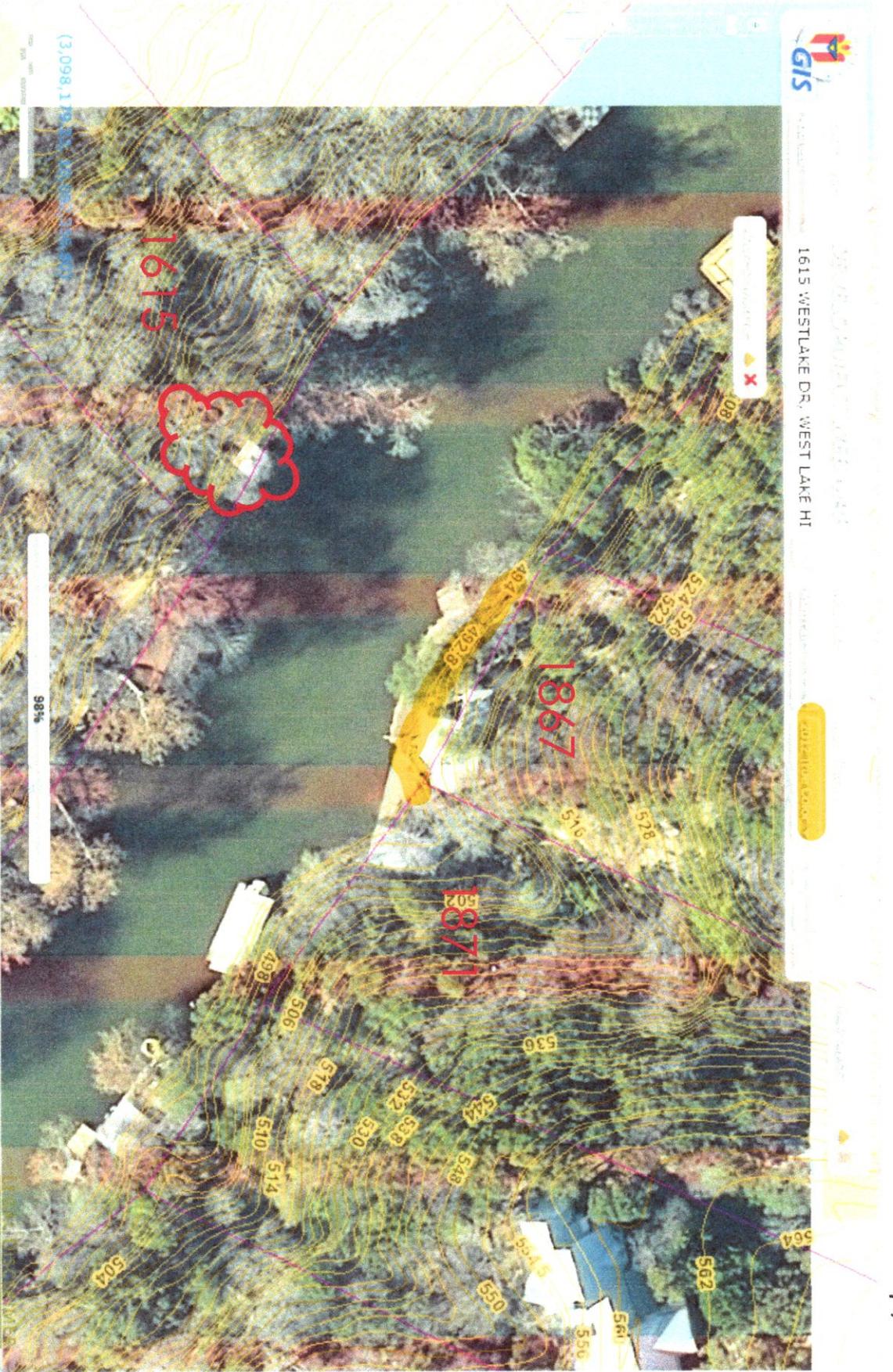
1/1
A10f4



PREPARED BY RICK RASBERRY 11/15/17

2012 True Color

A2 of 4



PREPARED BY RICK RASBERRY 11/15/17



P01/14



AV464





NOTIFICATIONS

CASE#: C15-2017-0054
LOCATION: 1615 WESTLAKE DR



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

1" = 167'

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Revised
Appi.



CITY OF AUSTIN
Development Services Department
One Texas Center | Phone: 512.978.4000
505 Barton Springs Road, Austin, Texas 78704

Board of Adjustment General/Parking Variance Application

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

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. *If more space is required, please complete Section 6 as needed.* All information is required (if applicable).

For Office Use Only

Case # 015-2017-0054 ROW # _____ Tax # _____

Section 1: Applicant Statement

Street Address: 1615 Westlake Drive

Subdivision Legal Description:

LOT 2 BLK A THE STUDDER SUBDIVISION

Lot(s): _____ Block(s): _____

Outlot: _____ Division: _____

Zoning District: City of West Lake Hills Jurisdiction

I/We Rick Rasberry, CESSWI on behalf of myself/ourselves as authorized agent for Dustin Donnell affirm that on Month February, Day 26, Year 2018, hereby apply for a hearing before the Board of Adjustment for consideration to (select appropriate option below):

Erect Attach Complete Remodel Maintain Other: _____

Type of Structure: Boat Dock

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

- 1. LDC 25-2-1176(A)(2) -- Request to increase length of boat dock from 21.7' to 30.0'
- 2. LDC 25-2-1176(A)(4) -- Request to increase width of boat dock from 25.7' to 30.0'

Section 2: Variance Findings

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 supporting documents.

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.

I contend that my entitlement to the requested variance is based on the following findings:

Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

The existing boat dock on the property was designed and built more than sixty (60) years ago and is very small in relation to boat dock designs approved now to safely accomodate much larger modern-day watercraft sizes and configurations. The proposed variance is the minimum departure from the rules to achieve a safe boat dock design footprint arrangement necessary to accommodate the Owner's two (2) watercraft, and would be a commensurate footprint size of 30' X 30' commonly approved by COA in the area -- a safety priviledge enjoyed by other similarly situated properties to facilitate a resonable use.

Hardship

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

Other similarly situated boat docks already developed in Bee Creek area have been granted approved site plans and site plan exemptions from COA with variances to LDC 25-2-1176 regarding dock widths/lengths to realize safety privileges. Additionally, the property on opposite shoreline has claimed several vertical and horizontal feet of shoreline unlawfully, creating a special and unique hardship limitation on the 1615 Westlake Dr. property.

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

The property on opposite shoreline has claimed several vertical and horizontal feet of land/shoreline unlawfully, creating a special and unique hardship limitation on the LDC 25-2-1176 channel width rule provision calculations for the 1615 Westlake Dr. property.

Area Character

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 variance is the minimum departure from the rules to achieve a safe design footprint arrangement necessary to accommodate the Owner's two (2) watercraft, and would be a commensurate footprint size of 30' X 30' commonly approved by COA. The proposed footprint of dock (1006 square feet) would also be 16% smaller than the 1200 square feet maximum allowed by rule. The proposed improvements would in no way impair the use of adjacent conforming properties and the variance is heavily supported by the neighborhood.

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 in the City of Austin Land Development Code Chapter 25-6, Appendix A 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 reasonably require strict or literal interpretation and enforcement of the specific regulation because:

No parking variance is being sought with the boat dock remodel site plan application and the Owner's Residence is near the boat dock.

- 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:

N/A -- Boat Dock

- 3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

The proposed boat dock remodel would be sited in a consistent and congruent fashion similar to other area boat docks in Bee Creek -- the City's on the water assessment by APD did not find any navigational safety hazard with the proposed plans. Any denial of the requested variance could present a navigational risk associated with boats protruding from any smaller structure.

- 4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

The site (single family residence) is located within the City of West Lake Hills full jurisdiction and any approved variance would apply to the boat dock use only under the City of Austin's rule conditions.

Section 3: Applicant Certificate

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

Applicant Signature: Rick Rasberry Digitally signed by Rick Rasberry Date: 2018.02.26 10:45:50 -06:00 Date: 02/26/2018

Applicant Name (typed or printed): Rick Rasberry (Lake Austin Boat Dock & Shoreline Permits)

Applicant Mailing Address: 2510 Cynthia Ct

City: Leander State: Tx Zip: 78641

Phone (will be public information): (512) 970-0371

Email (optional – will be public information): [REDACTED]

Section 4: Owner Certificate

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

Owner Signature: Rick Rasberry, Agent/Applicant for Owner Date: 02/26/2018

Owner Name (typed or printed): Dustin Donnell

Owner Mailing Address: 1615 Westlake Drive

City: West Lake Hills State: Tx Zip: 78746

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 5: Agent Information

Agent Name: Rick Rasberry (Lake Austin Boat Dock & Shoreline Permits)

Agent Mailing Address: 2510 Cynthia Ct

City: Leander State: Tx Zip: 78641

Phone (will be public information): (512) 970-0371

Email (optional – will be public information): [REDACTED]

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

Additional Information Provided as Attachments:

EXHIBIT A -- WATERSHED VARIANCES FINDING OF FACT APPENDIX U (LDC 25-8-41)

EXHIBIT B -- NOVEMBER 27, 2017 LETTER OF FINDINGS SUBMITTED TO THE BOARD

EXHIBIT C -- AGENT REPLY TO THE JANUARY 4, 2018 JAY SYMCOX EMAIL

EXHIBIT A

APPENDIX U - FINDINGS OF FACT

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
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

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



November 27, 2017

Board of Adjustment Members

EXHIBIT B1-5

City of Austin

Re: Request for Approved Variance LDC 25-2-1176(A)(2) and LDC 25-2-1176(A)(4) Regarding Boat Dock Length and Width Conditions, Boat Dock Remodel, SP-2017-0228DS, 1615 Westlake Drive on Lake Austin, TX

Dear Board Members:

On behalf of the Owner of the referenced property I am requesting approval to allow for the proposed boat dock remodel improvements to include the small length and width adjustments.

The original boat dock (Exhibit A) on the property was designed and built more than sixty (60) years ago and is very small in relation to boat dock designs made now to safely accommodate much larger modern-day watercraft sizes and configurations.

The Owner is requesting Board approval to increase the width of the boat dock by 4.3 feet, and to increase the length by 8.0 feet (Exhibit B). This would be the minimum safe design footprint arrangement necessary to accommodate the Owner's two large watercraft, and would be a commensurate footprint size of 30' X 30' commonly approved by COA.

The existing residential lot/property has been fully developed with a single-family residence and accessory boat dock for several decades. While the residential property is in the city limits of West Lake Hills, the proposed plans and specifications comply with City Code 25-7-62 along with all other parts of City Ordinance No. 20140626-113 *Relating to the Lake Austin Zoning District and the Regulation of Boat Docks, Bulkheads, and Shoreline Access*.

Following the October 9, 2017 Board of Adjustment public hearing, we received e-mail communication from Ms. Liz Johnston with the City's Watershed Protection Department requesting an update to the proposed site plans regarding the existing "channel width" measurements (Exhibit C).

A review of the City's GIS aerial imagery, along with pictures taken at the site revealed that the 1867 Westlake Dr. property on opposite shoreline from the proposed replacement boat dock, has claimed shoreline unlawfully, resulting in a unique hardship on these matters (Exhibit D).

Board of Adjustment Members

EXHIBIT B2-5

Request for Approved Variance LDC 25-2-1176(A)(2) and LDC 25-2-1176(A)(4)

November 27, 2017

Page 2

Following the City's Watershed Variances criteria per Appendix U (Exhibit E) of the Environmental Criteria Manual, we offer the following "Findings of Fact", as follows:

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 – The property on opposite shoreline has claimed several vertical and horizontal feet of shoreline unlawfully, creating a special and unique hardship limitation on the 1615 Westlake Dr. property 25-2-1176(A)(2) calculations.
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 – The proposed variance is the minimum departure from the rules to achieve a minimum safe design footprint arrangement necessary to accommodate the Owner's two (2) watercraft, and would be a commensurate footprint size of 30' X 30' commonly approved by COA. The proposed footprint of dock (1006 square feet) would also be 16% smaller than the 1200 square feet maximum allowed by rule.
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 – The proposal does not seek any special privileges not enjoyed by other similarly situated properties. In fact, examples of COA approved boat docks in the Bee Creek area with similar size variance conditions are provided for consideration (Exhibit F):
 - A. 1855 Westlake Drive 30' X 30'
 - B. 1 Hidden Cove 30' X 40'
 - C. 1887 Westlake Drive 30' X 35.5'
 - D. 1847 Westlake Drive 30' X 30'
 - E. 1611 Westlake Drive 30' into channel
4. Does the proposal demonstrate water quality equal to or better than would have resulted had development proceeded without the variance? YES – Approval of the variance would not impact water quality.
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 – Invoking any restrictions in light of the undue hardships presented, would effectively deny the Owner a reasonable economic use of the property.

EXHIBIT B3-5

Board of Adjustment Members

Request for Approved Variance LDC 25-2-1176(A)(2) and LDC 25-2-1176(A)(4)

November 27, 2017

Page 3

Additionally, we would provide Exhibit G showing the neighbor's written local support for approval.

It should be noted that the property Owner is seeking no special privilege to remodel the boat dock and other necessary appurtenances not already given to owners of other similarly situated property with approximately contemporaneous development, and as provided. The proposal would result in promoting ecological function and maintaining the natural character of the lakeshore. Any denial of the requested application for variance would be construed as deprivation of a privilege given to other property owners and would effectively deny the property Owner a reasonable use.

Please let me know if you should have any questions or require any additional information and we look forward to receiving your favorable reply of acceptance.

Very truly yours,

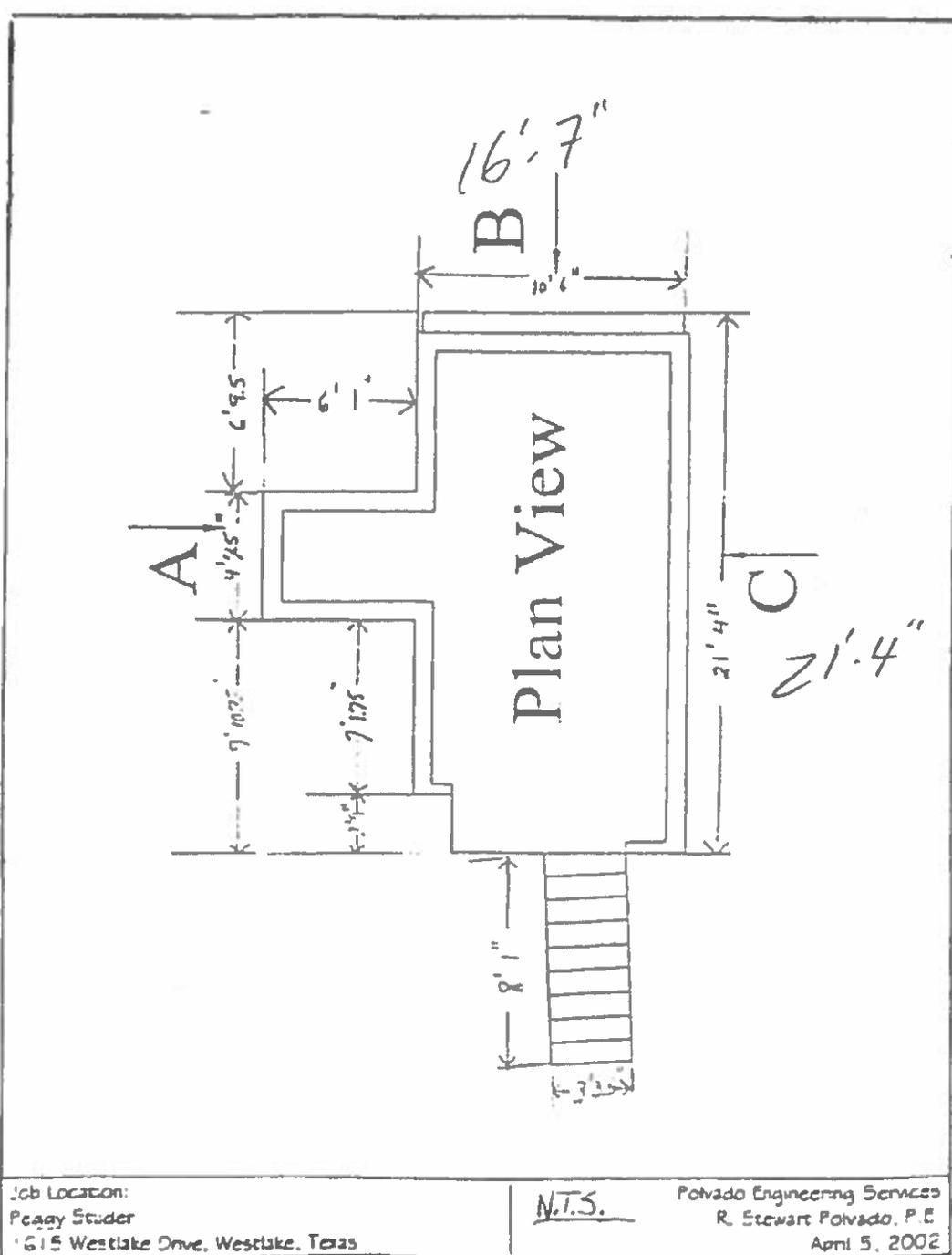


Ricky "Rick" Rasberry, CESSWI

cc: Dustin Donnell

Existing Dock Design

EXHIBIT B4-5



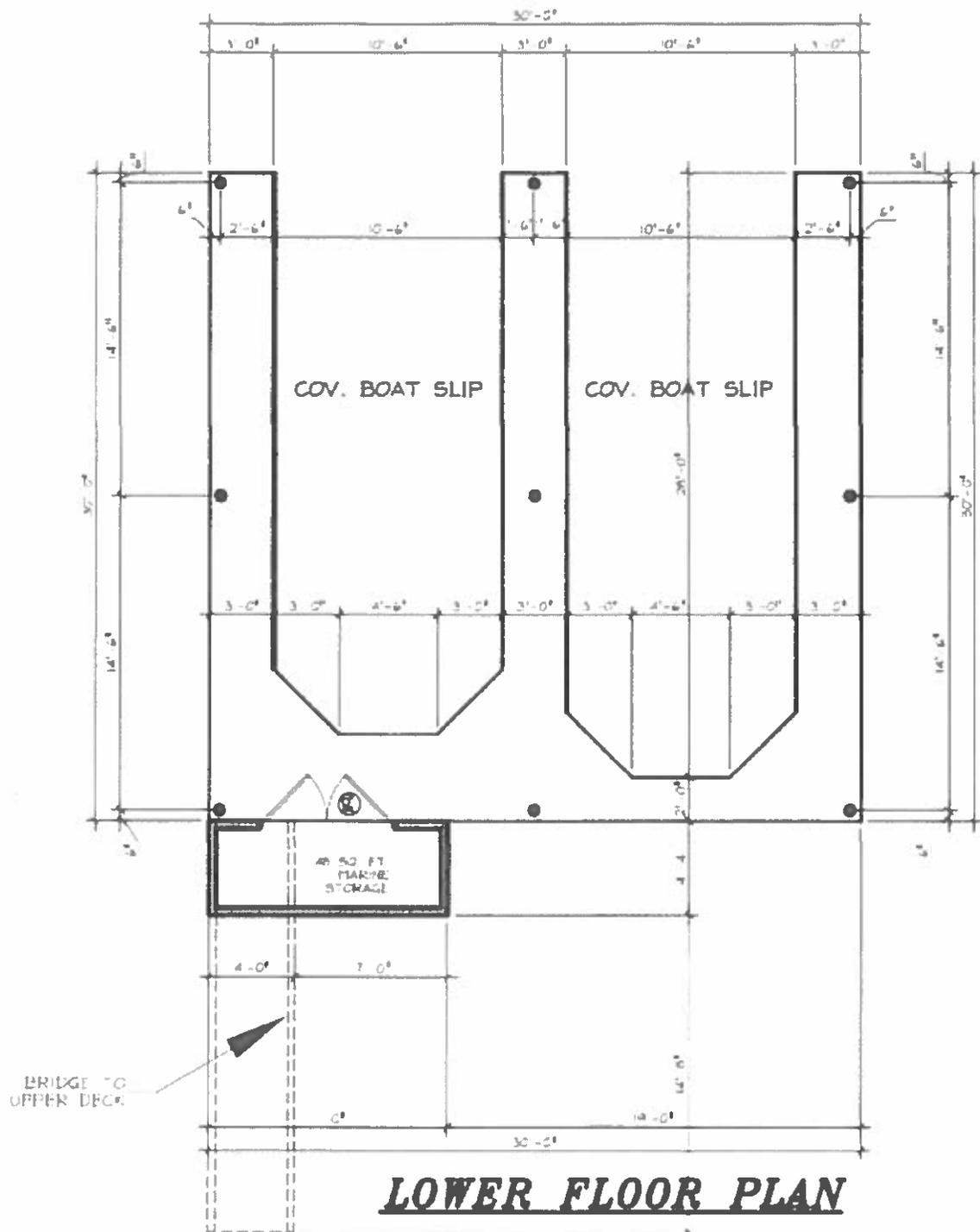
Job Location:
Peay Stader
1615 Westlake Drive, Westlake, Texas

N.T.S.

Polvado Engineering Services
R. Stewart Polvado, P.E.
April 5, 2002

Proposed Dock Design 1006 Square Feet

EXHIBIT B5-5



Rick Rasberry

From: Rick Rasberry
Sent: [REDACTED]
To: [REDACTED]
Cc: Justin Dornier
Subject: 1847 Westlake Drive Dredging of Bee Creek Channel

EXHIBIT C1-4

Thanks again for the help with this late back-up material Leanel

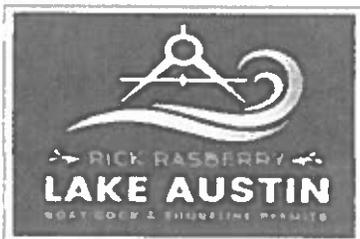
Liz, we're looking at Mr. Symcox's letter and we want to be sure we can respond factually to Board when we go back next month. We see that Mr. Symcox purports spending "thousands of dollars dredging out the channel..."

This case represents a significant harm to everyone that is on the cove above or North of the subject property. This arm of the lake is a creek arm and while the surface area of the water appears to be very wide at the subject property the actually navigable channel is very narrow. As a result of Sedimentation this creek has filled in dramatically over the years and has left only a very narrow channel that is deep enough for boats to access. In case you are not aware of this but I must remind everyone that the last 8 to 10 boat docks along the lake to the north of this project had no access to the lake from 2015 to 2017 because the channel was silted in and was not until last February that we were able to enter the lake bed and dig out the channel. We spent thousands of dollars and hundreds of man hours to hand dig the silt out from under docks and out of the channel that we could use our boats and have lake access again. This dock will most certainly accelerate the siltation and obstruction of the channel

We don't see any City approved plans, permits, exemptions, etc. for any dredging at 1847 Westlake Dr. as remarked by Mr. Symcox – did that development get approval by COA that we don't know about?

Kindest Regards,

Rick Rasberry, CESSWI
Lake Austin Boat Dock & Shoreline Permits
512-970-0871



From: [REDACTED]
Sent: T [REDACTED]
To: Joh [REDACTED]
<Leane [REDACTED]>
Subject: 1615 Westlake Drive

Hi Liz/Leane,

EXHIBIT C2-4

Would you mind sending me a copy of the letter that was brought up last night where we were instructed to respond in our next hearing?

Thank you!
Dustin

--

Dustin Donnell
Donnell Development LLC
o) 512.394.4577
m) 512.534.0464
dus [REDACTED]

From: [REDACTED]
Subject: C15-2017-0054
Date: Thursday, January 04, 2018 5:40:41 PM

EXHIBIT C3-4

Ms. Heldenfels, please see my attached objection to the proposed Variance A relating to the distance the dock may extend from the shore. of the above referenced case. I have no objection to variance B regarding the width of the Dock.

I am in the real-estate business and are very protective of landowners rights and I would not attempt to restrict a person's right to develop their property under existing laws and ordinances. In many cases I am not opposed to variances when these variances are reasonable and do not cause harm or undue hardship to adjacent property owners or businesses.

We have presented new evidence in support of the APD's finding that approval of the variance would not cause any navigational risk – and any notion suggesting that approval of the variance would "most certainly accelerate the siltation and obstruction of the channel" is without any merit whatsoever.

This case represents a significant harm to everyone that is on the cove above or North of the subject property. This arm of the lake is a creek arm and while the surface area of the water appears to be very wide at the subject property the actually navigable channel is very narrow. As a result of Sedimentation this creek has filled in dramatically over the years and has left only a very narrow channel that is deep enough for boats to access. In case you are not aware of this but I must remind everyone that the last 8 to 10 boat docks along the lake to the north of this project had no access to the lake from 2015 to 2017 because the channel was silted in and was not until last February that we were able to enter the lake bed and dig out the channel. We spent thousands of dollars and hundreds of man hours to hand dig the silt out from under docks and out of the channel so that we could use our boats and have lake access again. This dock will most certainly

We are not finding that this work was approved by COA and it's unknown now what real impacts this may have caused to the creek?

This channel in fact runs along the western side of the creek arm exactly where the Applicant wants to place their dock. While I do not propose to prevent them from having a dock I strongly oppose a variance. The construction of any dock within code will greatly reduce and impede my access as well as the access of anyone else to the North upstream of this dock to the main lake but a larger dock could entirely cutoff my access.

The Hydrology or water flow at this point in the lake is very simple the eastern side of the creek and therefore its bottom is very shallow the western side is very steep and therefore the deepest side of the creek. The West side of the creek channel (side which subject is located) beginning above the subject property and running along past the subject property is also a bend. Drainage and runoff from the steep hills above the lake pick up sediment because of the velocity of the water on the steep hills and the very low friction created by the smooth limestone creek bed above the lake allows not only fine sediment but gravel as large as .5 to 1.5 inches in diameter to be washed down from the hills through the creek and into the lake. Velocity of water equals power and determines what size and weight of sediment is suspended in and carried by it. As the creek hits the lake the velocity of the water is slowed and the larger sediment begins to drop immediately. When the water hits the lake it is spread out from the narrow and steep creek channel above the lake to the flat wide creek arm of the lake resulting in an immediate and dramatic reduction of water velocity. Larger sediments are deposited at the head of the creek arm while smaller ones

We have presented new evidence in support of the APD's finding that approval of the variance would not cause any navigational risk – and any notion suggesting that approval of the variance would "accelerate the deposit of sediment, alter the lake bed bathymetry, or change any drainage conditions" is without any merit whatsoever.

EXHIBIT C4-4

continue to travel. The bend in the creek increase the speed of the water along the western edge and allows for water to hold its sediment longer while water spreading out in the wide part of the channel slows dramatically. This water spreading across the channel and slowing begins dropping all of its sediment while the higher velocity water holds more sediment longer therefore slowing the rate at which the channel on the western edge fills in while the wide slower portion accumulate sediment at a much higher rate. Additionally the geography of the creek area as stated above allows for the deepest part of the creek to be on the western edge (where subject is located) therefore while there is sedimentation it has been slower and the depth allows for a longer period to remain open. Additionally, the introduction of a large obstruction in the water (boat dock) will cause the water to slow in the channel and drop more sediment faster as well as create an eddy that fills in very quickly on the backside of the obstruction much like we have all seen a large rock in a flowing river create the same effect.

The existing dock built at 1847 Westlake Dr. secured COA variance and developed 30' X 30' dock under City of Austin Building Permit 2002-005853BP.

I as well as my neighbors have all constructed docks that are within the code guidelines and a substantial dock can easily be built to serve any boat up to 27 feet on a "head in basis" and much larger if the boat stall is constructed Perpendicular to the shore.

This variance should not be granted for the following reasons:

1. The variance is not necessary for the reasonable use and enjoyment of the subject property. Asking for minimum departure from rule similarly (30' X 30').
2. The denial of the variance does not prohibit the construction of a large and sufficient dock that can satisfy a great range of needs a Asking for similar 30' X 30' dock
3. A strong case could be made to restricting the depth of the dock to less than the 21.7 feet based on the directors discretion in § 25-2-1176 A. (1) Asking for similar dock.
4. The granting of the variance will most certainly cause a hazard to navigation in this portion of the lake by protruding more than half way across the only navigable channel on this portion of the Lake. Evidence presented to the contrary.
5. A boat dock at this location will accelerate the environmental impact of siltation of the lake. A larger dock will increase that impact. This claim has no merit.
6. Granting of the variance creates a permanent and irrevocable barrier to our lake access. Asking for similar size dock as complainant.
7. Granting the variance and construction of a larger dock will severely impact the value of my property and constitute a taking by eliminating or severely restricting my access to the lake and therefore my enjoyment and economic benefit of my property. This claim has no genuine merit whatsoever.

This is a very easy case now that you are aware of the impact of this dock. You would never grant a variance to someone who wished to reduce the width of a street in front of someone's house and likewise you should not grant this variance which will obstruct reduce and potentially eliminate access to everyone North of this property to the lake.

Thank you for your consideration.

Jay Symcox
Symcox Development
2300 South Lamar, #106
Austin, Texas 78704



Boat Dock Response - 1615 Westlake Drive



Thu, Feb 22, 2018 at 2:57 PM

Dustin, thanks for providing me the information of your study. It looks like you have conducted this in a professional and thoughtful manner. Based on what you provided I will sign your letter of support and withdraw my objection. I wish I had the opportunity to see this prior to my objection.

Jay Symcox
Symcox Development
2300 South Lamar, #106
Austin, Texas 78704
Phone: 512.416.7961
Fax: 512.416.7963
Cell: 512.415.6030



Hi Jay,

Good talking to you last night. Attached is the presentation that's been submitted to the city in response to your letter bringing up the concerns of depth/navigability. Hopefully it's pretty self explanatory, but if something doesn't make sense please give me a buzz and we can walk through it.