

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

DATE: Monday October 14, 2019

CASE NUMBER: C15-2019-0056

- Brooke Bailey OUT
- Jessica Cohen
- Ada Corral
- Melissa Hawthorne
- William Hodge
- Don Leighton-Burwell
- Rahm McDaniel
- Darryl Pruett
- Veronica Rivera
- Yasmine Smith
- Michael Von Ohlen
- Kelly Blume (Alternate)
- Martha Gonzalez (Alternate)
- Denisse Hudock (Alternate)

APPLICANT: Eric Scheibe

OWNER: Jerad Kolarik

ADDRESS: 1400 OLTORF STREET

VARIANCE REQUESTED: The applicant is requesting a variance(s) from the maximum allowable Compatibility Height requirements of Article 10, Compatibility Standards, Division 2 –Development Standards:

a. to decrease the minimum setback requirement from Section 25-2-1063 (B) (2) (Height Limitations and Setbacks from Large Sites) from 25 feet to 0 feet along the south property line

Note: The Land Development Code states that a person may not construct a structure 25 feet or less from property on which a use permitted in an SF-5 or more restrictive zoning district is located.

b. to increase the maximum compatibility height requirement of Section 25-2-1063 (C) (1) and (2) (Height Limitations and Setbacks for Large Sites) to 45 feet in height in order to erect a 45 foot Office/Retail use in a "CS", General Commercial Services zoning district.

Note: The Land Development Code height limitations for a structure are: (1) two stories and 30 feet, if the structure is 50 feet or less from property: (a) in an SF-5 or more restrictive zoning district; or (b) on which a use permitted in an SF-5 or

more restrictive zoning district is located; or (2) three stories and 40 feet, if the structure is more than 50 feet and not more than 100 feet from property; (a) in an SF-5 or more restrictive zoning district; or (b) on which a use permitted in an SF-5 or more restrictive zoning district is located.

BOARD'S DECISION: BOA meeting Oct 14, 2019 The public hearing was closed by Chair Don Leighton-Burwell, Board Member Michael Von Ohlen motions to Postpone to November 7, 2019, Board Member Melissa Hawthorne seconds on an 11-0 vote; POSTPONED TO November 7, 2019.

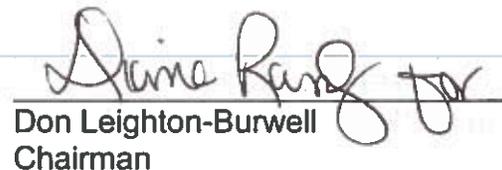
EXPIRATION DATE:

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:


Elaine Ramirez
Executive Liaison


Don Leighton-Burwell
Chairman

Date: 10/23/2019

From: Eric C. Scheibe, PE, CFM (Scheibe Consulting, LLC)

To: City of Austin Board of Adjustments

Subject: **Oltorf Development – 1400 W Oltorf St. Variance Request**

To whom it may concern:

This project is located within the city limits of the city of Austin and will be located at 1400 W Oltorf St., Austin, TX 78704. The property is a 0.98 Acre tract of land that is currently considered a legal lot as per a legal lot status determination made by the City of Austin. The property is described below:

0.9752 AC, LOT 13, BLK 1, FREDERICKSBURG ROAD ACRES

This development is subject to the review and permitting by the City of Austin. This tract currently has residential structures that are to be removed, with the goal of constructing one new commercial building. This tract is located in the 'Urban Watershed' of W. Bouldin Creek.

The owner/developer of this property is seeking approval from the Board of Adjustments (BOA) to have the compatibility setback located along the southern property line removed. This setback is due to a SF-3 zoned property just south of this tract, which is also owned by the City of Austin. This SF-3 tract is fully encompassed within the W. Bouldin Creek channel and is undevelopable. All other properties in this region are zoned Commercial Services (CS). The owner applied for a BOA variance to this compatibility setback on 10/14/19. At this meeting the local neighborhood association protested our requested variance based primarily on the fact that we have outstanding floodplain comments with the City of Austin. The owner/developer submitted a site plan application back in May 2019 and is in the process of resolving the first (1st) round comments from the City. In an effort to illustrate the owner/developers course of action to resolve these outstanding floodplain comments, we have included said comments below, along with our written responses.

Below are the floodplain comments received from Katrina Bohrer (COA Floodplain Reviewer) on the initial submittal of this project's site plan application. In red you will see our responses to each comment that will be included in our next submittal.

- FP1. Please revise the floodplain note to include the effective date of the FIRM panel. For this site, the current effective FIRM panel number is 48453C0585H effective 9/26/2008.
Response: Floodplain note on cover sheet revised.
- FP2. The applicant's engineer should reference the source of the floodplain study utilized to delineate the limits of the 100-year floodplain shown on the plans. If the City's regulatory model was utilized, copies of the regulatory H&H models should be included in the attached drainage or engineering report with an acknowledgement that the sealing

engineer certifies the accuracy of the model. Please include an updated report with the next update. Floodplain models may be obtained from www.atxfloodpro.com.

Response: COA models were used to delineate floodplains and will be included in this submittal. Engineering report updated to include this information.

- FP3. Provisions in Austin's Drainage Criteria Manual (DCM) require you to perform a floodplain study to determine the limits of the fully-developed 100-year floodplain using methods outlined in the criteria manual. Please do the following:
- Provide to this reviewer a copy of the floodplain study, including electronic copies of the hydrologic and hydraulic models used to determine the flows and water surface elevations in the creek, hydraulic cross section layout sheets, and information used in the development of the study. This information should be contained within a report signed and sealed by a licensed engineer.
 - On applicable site plan sheets, please delineate and clearly label the limits of the of the determined pre-development 100-year floodplain.
 - If modifications to the floodplain are proposed, the applicant must show that there are no adverse impacts to the floodplain as a result of the modification. Adverse impacts include a loss of floodplain storage volume and rises in flood elevations on adjacent properties. Applicant may have to provide supporting documentation, including modeling to show no adverse impacts as a result of the proposed development.
- Response: a.) Floodplain study will be included in next submittal for review b.) 100-yr floodplain shown on site plan sheet and added floodplain sheet c.) Proposed conditions are to be included in floodplain model, no adverse impacts are occurring.**

- FP4. Please delineate and clearly label the following items on applicable site plan sheets:
- Location of the existing site conditions Fully Developed 100-year Floodplain.
 - Location of the proposed site conditions Fully Developed 100-year Floodplain.
 - Location of the existing site conditions Fully Developed 25-year Floodplain.
 - Location of the proposed site conditions Fully Developed 25-year Floodplain.
 - Location of the FEMA 100-year Floodplain.
 - Location of previously dedicated drainage easement.
 - Location of additional proposed drainage easement.
- Applicant may obtain electronic copies of the City's regulatory models by visiting www.ATXFloodPro.com. (Please note that this watershed, the FEMA floodplain is not equal to the Fully-Developed Floodplain.)
- Response: Reference added floodplain sheet. These delineated boundaries have been added as requested.**

- FP5. The applicant is required to contain the limits of the FEMA and City of Austin Regulatory floodplain within a drainage easement. Please provide documentation demonstrating this or provide requisite easement.
- Response: A drainage easement will be pursued as requested. Drainage easement survey will be submitted for review.**

- FP6. City of Austin Regulatory floodplain delineations should be based on the best available data including site specific topographic data. The applicant's engineer should delineate water surface elevations generated by the regulatory model onto site gathered topo data.
- Response: Ok water surface elevations will be generated by the regulatory model onto site gathered topo data.**

- FP7. It appears from the plans that the proposed building and associated grading are located in the 100-year floodplain. Applicant will need to demonstrate that the proposed development activities do not cause adverse floodplain impacts including the following tasks:
- Determine the impacts of the proposed grading on the 25- and 100-year water surface elevations. The applicant's engineer should reflect the proposed grading in the hydraulic model to determine impacts. Increases in 25- and 100-year water surface elevations on other properties are prohibited.
 - Show that the floodplain storage volume is conserved. The applicant should quantify the loss of floodplain storage volume resulting from the placement of fill within the floodplain and compensate for this loss with a compensatory cut or other method.
- Response: No floodplain storage volume is anticipated to be lost. HEC-RAS model will be included to show the no adverse impact the development has on the site and floodplains. Please note, the proposed improvements within the floodplain are minimal and only include a small portion of one parking stall, which will have only minor flooding depth over the parking stall of less than 8-inches, which meets city code.**
- FP8. Please show the Finished Floor Elevations (FFE) of the proposed buildings on the site. Buildings must have a FFE 1 foot greater than the adjacent floodplain's 100-year water surface elevation.
- There are multiple areas which have "FFEL" which I assume are finished floor elevations for those areas, however, there is no indication of the finished floor elevation for the parking area. Please clarify.
- Response: The schematic shown on the site plan sheet includes first floor buildings and the parking lot. Reference building elevation sheets for clarification. Spot elevations are included on the grading plan sheet.**
- FP9. FYI: Please note that the current floodplain regulations require that the FFE of the proposed buildings adjacent to the 100-year floodplain must be 1' greater than the 100-year WSEL. City of Austin staff has proposed changes to the floodplain regulations to require FFE's be 2' above the current FEMA 500-year floodplain or Atlas 14 100-yr floodplain. FFE requirements will be based on current code at time of application.
- Response: Understood. All proposed buildings meet this requirement. Please reference site plan sheet with finish floor elevations noted and architectural elevations.**
- FP10. The proposed development as submitted will require a floodplain variance. A variance may be avoided if encroachments are removed from the floodplain. Comment will be cleared when plan has been brought into compliance with current code and criteria or a floodplain variance has been granted.
- Response: Our project does not require a floodplain variance as we are not adding any fill to the floodplain. The only portion of the proposed development that is located in the floodplain is one (1) parking stall that will be constructed to have an elevation that matches existing grade. Therefore, there is no fill proposed and the parking stall will have less than 8-inches of water over it during a 100-yr event. We do not feel we need a variance, and we feel this is clearly described in the construction documents provided.**

- FP11. Due to proposed encroachments within the floodplain, this site plan will require a floodplain variance. This variance may be granted administratively if the applicant is able to meet the seven provisions outlined in LDC 25-7-92 C(1) which are:
- a. The finished floor elevation of the proposed building is at least two feet above the 100-year floodplain;
 - b. normal access to a proposed building is by direct connection with an area above the regulatory flood datum, as prescribed by Chapter 25-12, Article 1;
 - c. a proposed building complies with the requirements in Chapter [25-12, Article 1](#), Section 25-12-3 Appendix G (*Flood Resistant Construction*) and Section 1612 (*Floodplain Loads*);
 - d. the development compensates for the floodplain volume displaced by the development;
 - e. the development improves the drainage system by exceeding the requirements of Section [25-7-61](#) (*Criteria for Approval of Plats, Construction Plans, and Site Plans*), as demonstrated by a report provided by the applicant and certified by an engineer registered in Texas;
 - f. the variance is required by unique site conditions; and
 - g. development permitted by the variance does not result in additional adverse flooding of other property.

This comment will be cleared upon the granting of a floodplain variance or the plan has been changed to not require a floodplain variance.

Response: We do not feel we need a variance. Please see response to comment FP10.

- FP12. The applicant's engineer should certify that all site development activities located within the 100-year floodplain are designed and will be constructed with methods, practices and materials that minimize flood damage and that are in accordance with ASCE 24-14 Flood Resistant Design and Construction (please reference LDC 25-7-61(a)2 and LDC 25-12-3 G103.1). This certification may be letter signed and sealed by the applicant's engineer.

Response: Ok, certification letter will be included.

- FP13. The City of Austin considers the 25-year floodplain as the floodway. As such, prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the building official shall require submission of a certification by a Professional Engineer licensed by the State of Texas, along with supporting technical data in accordance with the City of Austin Drainage Criteria Manual, that demonstrates that such development will not cause any increase of the level of the design flood. Please provide this certification and modeling demonstrating that the proposed development will not cause a rise in the floodway.

- a. It is unclear if any of the proposed improvements are within the 25-year floodplain as the 25-year floodplain was not delineated.

Response: No proposed improvements are within the 25-year floodplain.

- FP14. The site plan currently shows parking encroaching into the 100-year and 25-year City of Austin regulatory floodplains. Per LDC 25-7-92, parking is not allowed to encroach in the 100-year floodplain UNLESS it qualifies under the exceptions in LDC 25-7-93.A and is in compliance with LDC 25-7-95. No parking is allowed in the 25-year floodplain.

- a. Please adjust site plan accordingly to remove the parking spaces in the 25-year floodplain

- b. Please provide calculations showing the average depth and maximum depth of flooding in the parking spaces in compliance with 25-7-95.B.
 - c. Please provide information on the site plan about the signs as required in 25-7-95.B.
Response: No parking is proposed within the 25-year floodplain.
- FP15. The temporary spoils and staging area is not shown on the site plan submittal. Be aware that it is preferred that the spoils and staging area is not located in the floodplain.
Response: Ok, spoils and staging area are shown on ESC sheet.
- FP16. To meet 2012 international building code, please include a note on the coversheet indicating that an elevation certificate will be required at form survey.
Response: Ok, note added to cover sheet.
- FP17. Include a note on the coversheet indicating that prior to obtaining a certificate of occupancy, an elevation certificate, completed post construction, will be required (contact Katina Bohrer at 512-974-3558)
Response: Ok, note added to cover sheet.
- FP18. Provide more information about the parking – is there any plan for below-ground parking? If there are plans for below-grade parking, additional floodproofing comments will be added.
Response: There is no plan for below ground parking.
- FP19. FYI: Our understanding of flood risk in Austin is changing. What is now known as the 500-year floodplain is a good representation of what the 100-year floodplain will be according to a National Weather Service publication called Atlas 14. This could affect the layout of this development, including the location of drainage easements, buildings, and parking areas. The City will likely be using the current 500-year floodplain as the design floodplain for commercial building permit review in the near future. In order to minimize flood risk to our community and better ensure that this lot can be developed in the future, the City of Austin recommends that you consider the 500-year floodplain as a surrogate for the 100-year floodplain when designing this development. Please contact this reviewer if you have any questions.
- a. For this application, Atlas 14 will not have an impact on the review but be aware that future permits for the site may fall under Atlas 14 regulations depending upon when they are requested. It is likely that by the time construction is complete for this building/subdivision that Atlas 14 will be in effect for Austin thus changing the floodplain in the area and it is recommend that the Applicant and the Applicant's Engineer discuss flood resiliency and alterations which could be made to plan to reduce the risk of flooding of the proposed development (e.g. elevation of Finished Floors to be above current 500-year floodplain, floodproofing of areas below current 500-year floodplain, utilizing 500-year floodplain in place of the 100-year floodplain, etc.)
Response: Ok.
- FP20. Additional comments may be added upon review of future updates.
Response: Ok.

In addition, below is an environmental comment we received from Kristy Nguyen (COA Environmental Reviewer) along with our reply.

EV 1 The proposed development does not meet the requirements for Redevelopment Exception under LDC 25-8-25. Per LDC 25-8-25(C)(1), the redevelopment [must] not increase the existing impervious cover. The existing impervious cover is 18.6% and 1.9% within the Critical Water Quality Zone, the proposed development will increase the impervious cover to 27.3% and 1.4% within the CWQZ. The project may apply LDC 25-8-42(B)(2) if all conditions are met under this section. Further review and comments are pending.

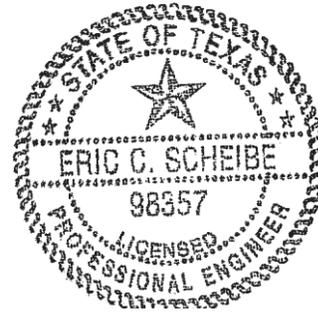
Response: Ok. Variance request letter included in next submittal. While the overall impervious cover will increase, the square footage footprint within the Critical Water Quality Zone onsite will decrease.

Please let us know if you have any questions. We can be reached at (512) 263-0418.

Thanks,



Eric C. Scheibe, PE, CFM
Scheibe Consulting, LLC
TBPE FIRM #13880
PO BOX 161357
Austin, TX 78716



Board of Adjustment

October 20, 2019

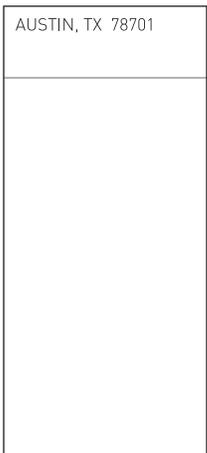
Boardmembers:

We are requesting a variance to be released from a compatibility setback triggered by an adjacent undevelopable, remnant SF-zoned lot so that we do not have to seek a variance from the zoning code requiring 40% street frontage, and so that we may achieve the minimal square footage maximum that can still be attained in spite of having multiple constraints on our atypical site.

1. The zoning code requires a 40% street frontage for our building. The narrow shape of our site means that the combined street frontage of a 40% building frontage and the required width of a two-way driveway encroaches on the compatibility setback that we are currently subject to due to our adjacency to a remnant SF-3 lot.
2. In order to build our building, we would need to achieve either a variance to build LESS than the 40% street frontage, a variance for a NARROWER driveway, OR a release of the adjacent property's compatibility setback requirements. Without one of these variances, our site is undevelopable for its intended zoning use as a commercial services (CS) use.
3. The variance to reduce the building frontage to less than 40% of the street width seems undesirable in that it goes against much of the COA zoning code's specific intent to create more walkable, livable and safe streetscapes by activating them with ground-level building uses.
4. A variance to narrow the two-way driveway requirements will violate the safety standards found in the parking and driveway design criteria guidelines.
5. A variance to eliminate the compatibility setbacks triggered by the adjacent SF-3 property seems the most logical and least impactful variance to request for the following reasons.
 - 5.1. The adjacent SF-3 property clearly seems a remnant that was never addressed in the city's updates to zoning maps. It is completely surrounded by CS zoned properties.
 - 5.2. The adjacent SF-3 property is not realistically accessible. It has very little access due to the Bouldin Creek overpass at the location of our site: 1400 Oltorf. A minimum width residential driveway with either Type A or Type B approach will require 20' and does not fit between an existing storm inlet and the end of the Bouldin Creek overpass. Or, in the best case scenario, it would require a variance of its own.
 - 5.3. The large majority of the SF-3 zoned property's site AND building area is completely within the city's current 100-year flood plain; and the entire site will be within the Atlas 14 100-year floodplain when those maps are adopted.
 - 5.4. The City of Austin owns this lot and has no current plans to develop it for single-family use.
 - 5.5. Our preferred use for this lot would be as public park land and we intend to work with the Zilker Neighborhood Association to change the zoning of this SF-3 adjacent lot to Public Park (P) zoning which ZNA has expressed as their desired outcome as well.
 - 5.6. If the adjacent property is zoned as parkland then the compatibility setbacks will no longer apply.
6. Not granting this compatibility setback places further undue hardship on an already extremely difficult site.
 - 6.1. Our current site is 42,515sf. By our zoning, we should be allowed to develop a

1220 Lavaca St.

AUSTIN, TX 78701



- building as large as 85,000sf.
- 6.2. Because of the large amount of site covered by 100-year flood plain and multiple large and heritage tree critical root zones, and a 200' fire hose limit from the street, there is a very limited and finite footprint we are able to develop.
 - 6.3. Our building's available parking is what determines the largest building we can build. Because of the very limited foot print and using the full available parking abatements, we would normally be able to build as large as 13,300sf.
 - 6.4. However, because all commercial use buildings larger than 10,000sf require a dedicated dumpster and space to accommodate a garbage truck, and because our site does not allow garbage truck access and maneuverability, we are forced to reduce our building to 10,000sf.
 - 6.5. 10,000 sf is less than 12% of our otherwise allowable area.
 - 6.6. 10,000sf is attainable only through the requested variance to be released
 - 6.7. The amount of space that actually encroaches in the compatibility setback is less than 150sf total: less than 1.5% of the largest amount of our already significantly limited space we are able to fit on our limited footprint.
 - 6.8. The commercial property to our West, currently being developed, has a driveway along our western edge which places hardship on our property's development potential and effectively also forces us to pursue a variance of some sort.
 - 6.8.1. In a study undertaken a few years ago of our own property's development potential, we obtained preliminary unofficial support from the COA for providing a driveway along the western edge of OUR property which would only be allowed through an administrative variance because its apron radius would encroach in front of the adjacent property to the west.
 - 6.8.2. The adjacent property's new driveway that has been planned and is being implemented disallows us to have that preliminarily approved driveway because we are unable to achieve the required apron for our own driveway.
 - 6.8.3. This causes our driveway to push a minimum of 25' (the radius dimension) from our western property line.
 - 6.8.4. This push causes our required driveway approach width to encroach on the same compatibility setback for which we are seeking the current variance.
 - 6.8.5. Not attaining this variance forces us into either pursuing a driveway width variance, which appears to be unsafe per city design criteria, OR it disallows us to develop our site at all.
 - 6.8.6. Either of these are undue hardships placed on our property.
7. Time is of the essence. Waiting to grant this compatibility setback, if so granted, would create more undue hardship.
- 7.1. Our owners have owned this property with the intent to develop it into a commercial building for over ten years.
 - 7.2. Although they had done due diligence when they originally bought the property, they learned, too late, that an adjacent SF use on the west side CS zoned property triggered compatibility setbacks that completely prohibited them from being able to develop their property.
 - 7.3. While they had done what they believed to be ample due diligence, they, like many, did not understand this nuance of our zoning code and have had to wait five years for the adjacent SF use to be demolished in preparation for a new CS use development to begin. This is what enabled them to recommence the development process on their property.
 - 7.4. The proposed use as a CS building with parking on the lower level and office and event space above will allow them to provide a safer use than the current single-family rentals currently in the future floodplain. A delay to the new

building being realized only maintains this less safe condition of the site.

- 7.5. A postponement from the October 14th Board of Adjustment Meeting was predicated on the need for an administrative variance for an encroachment in a floodplain being granted first. However, we contend that that administrative variance should not delay the variance request being sought herein for the following reasons:
 - 7.5.1. The floodplain encroachment occurs for only a portion of ONE parking space in the entire development: approximately 10sf of the site.
 - 7.5.2. It has been indicated by our site plan reviewers that if we provide information on how we are addressing our encroachment on the floodplain basin that it can likely be approved administratively.
 - 7.5.3. Our back-up option, which currently does not appear to be necessary, would be to eliminate this one parking spot. (Again, we believe that this will NOT be necessary because of our reviewers input to date).
 - 7.5.4. There was not sufficient time to get this administrative variance definitively settled between our last BOA hearing on October 14th and the resubmission of documents for our upcoming hearing November 7th, which were due on October 23rd, 9 days after understanding that this might clear the way for the variance in question herein.
- 7.6. The delay, pending the above floodplain variance, was suggested by ZNA. However, in their own presentation on October 14th, and subsequently in written communication, they indicated that they are not concerned with the encroachments on the compatibility setbacks and that their true focus/interest is in re-zoning that triggering adjacent SF-3 property to P (Park) zoning. WE SHARE THAT INTEREST and intend to work WITH the ZNA to rezone that land and are even willing to provide some of the maintenance for that land since it abuts our own green space.
- 7.7. The time it would take to go through a rezoning process would unduly delay our own development project significantly, further maintaining our current site condition which is less safe for our occupants than our new development would be. It would also add to the ten+ years we have already had to wait to develop this property.
- 7.8. There will not have been any purpose to a delay if we can indeed get this property rezoned. Since we believe rezoning this compatibility triggering SF-3 property to a non-triggering P zoned property will be desirable for all applicable stakeholders and will ultimately be attainable and successful, there seems not to be any real advantage for anyone in delaying this variance request.

In summary: the variance we are requesting has little negative impact on an adjacent unusable and mis-zoned property. On the contrary, it is only seemingly having negative impact on our own property by further limiting the already significantly limited developable area, OR by triggering an alternate variance option, one of which would be unsafe, and the other of which would not uphold an urban planning intent successfully being implemented in many of the city's recent development projects. In a worst case scenario, not attaining this variance could render the property completely undevelopable and unsafe in its current use. These would indeed be significant hardships.

BOA GENERAL REVIEW COVERSHEET

CASE: C15-2019-0056

BOA DATE: October 14, 2019

ADDRESS: 1400 W. Oltorf St.

COUNCIL DISTRICT: 5

OWNER: Jerad Kolarik

AGENT: Eric Scheibe

ZONING: CS

LEGAL DESCRIPTION: .9752 AC LOT 13 BLK 1 FREDERICKSBURG ROAD ACRES

VARIANCE REQUEST: decrease minimum setback requirement and increase maximum compatibility height requirement

SUMMARY: erect a 45 foot tall Office/Retail use

ISSUES: adjacent SF-3 requirements, located within the CWQZ of West Bouldin Creek

	ZONING	LAND USES
<i>Site</i>	CS	General Commercial Services
<i>North</i>	CS-MU-CO	General Commercial Services-Mixed Use
<i>South</i>	SF-3; CS-MU-V-CO	Single-Family; General Commercial Services-Mixed Use
<i>East</i>	CS-NP	General Commercial Services
<i>West</i>	CS; SF-3	General Commercial Services; Single-Family

NEIGHBORHOOD ORGANIZATIONS:

- Austin Independent School District
- Austin Lost and Found Pets
- Austin Neighborhoods Council
- Bike Austin
- Friends of Austin Neighborhoods
- Homeless Neighborhood Association
- Neighborhood Empowerment Foundation
- Perry Grid 614
- Preservation Austin
- SEL Texas
- Sierra Club, Austin Regional Group
- South Central Coalition
- TNR BCP – Travis County Natural Resources
- Zilker Neighborhood Association

September 30, 2019

Eric Scheibe
1400 W Oltorf St
Austin TX, 78704

Property Description: .9752 AC LOT 13 BLK 1 FREDERICKSBURG ROAD ACRES

Re: C15-2019-0056

Dear Eric,

Austin Energy (AE) has reviewed your application for the above referenced property, requesting that the Board of Adjustment consider a variance(s) from maximum allowable Compatibility Height requirements of Article 10, Compatibility Standards, Division 2 –Development Standards:

- to decrease the minimum setback requirement from Section 25-2-1063 (B) (2) (*Height Limitations and Setbacks from Large Sites*) from 25 feet to 0 feet along the south property line
- to increase the maximum compatibility height requirement of Section 25-2-1063 (C) (1) and (2) (*Height Limitations and Setbacks for Large Sites*) to 45 feet in height in order to erect a 45 foot Office/Retail use in a "CS", General Commercial Services zoning district.

Austin Energy does not oppose request provided any proposed and existing improvements are following AE clearance criteria requirements, The National Electric Safety Code And OSHA. Any removal or relocation of existing electric facilities will be at owners/applicants expense.

Please use this link to be advised of our clearance and safety requirements which are additional conditions of the above review action:

https://library.municode.com/tx/austin/codes/utilities_criteria_manual?nodeId=S1AUENDECR_1.10.OCLSARE

If you require further information or have any questions regarding the above comments, please contact our office. Thank you for contacting Austin Energy.

Eben Kellogg, Property Agent
Austin Energy
Public Involvement | Real Estate Services
2500 Montopolis Drive
Austin, TX 78741
(512) 322-6050



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

NOTIFICATIONS

CASE#: C15-2019-0056

LOCATION: 1400 W OLTORF STREET



1" = 333'

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.



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: 1400 W Oltorf St

Subdivision Legal Description:
0.9752 AC, LOT 13, BLK 1, FREDERICKSBURG ROAD ACRES

Lot(s): 13 Block(s): 1

Outlot: _____ Division: _____

Zoning District: CS

I/We Eric Scheibe on behalf of myself/ourselves as authorized agent for Little City Developments affirm that on Month September, Day 9, Year 2019, 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: Commercial

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

- LDC 25-2-1063 (B) - 25' structure setback.
- LDC 25-2-1063 (C) - Height limitation setbacks.

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:

This property is zoned CS and the adjacent lot to the southwest is zoned SF-3. This adjacent zoning significantly impacts the development potential for this lot due to the Compatability Setback and Height requirements in the LDC. The lot to the south is owned by the City of Austin, zoned SF-3, and is a lot located within the channel of West Bouldin Creek. This southern lot will likely never be developed as it lies within the CWQZ, yet the code currently requires a compatability setback onto our property for buildings and parking. Our request is to have the compatability setbacks requirements removed from our property and/or project.

Hardship

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

- 1) Our property's total site area is 42,720.43 sf, but 26,176.81 sf is located within the CWQZ of W Bouldin Ck, and with the 25 ft compatability setbacks in place, our total developable area is limited to only 12,075.41 sf (28.3% of the original area).
- 2) Our property is adjacent to a property to the southwest that is currently zoned SF-3, which will likely never be built on as it is located comepletely within the CWQZ on W Bouldin Creek.

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

All other properties in the region of West Oltorf have more room to construct, as they are not limited by a (1) a CWQZ that consumes over half the lot total area; (2) compatability setbacks from a vacant and undevelopable city owned lot located in W Bouldin Creek.

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 lot to the southwest zoned SF-3 will likely never be built on as it is completely located within the CWQZ and is owned by the city. We are requesting that there are not setback requirements or limitations associated with this neighboring lot.

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:

N/A

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

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

N/A

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

N/A

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: Eric Scheibe Date: 09/09/2019

Applicant Name (typed or printed): Eric Scheibe

Applicant Mailing Address: PO BOX 161357

City: Austin State: Texas Zip: 78746

Phone (will be public information): (512) 263-0418

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: Jerad Kolarik Date: 09/09/2019

Owner Name (typed or printed): Jerad Kolarik

Owner Mailing Address: 2210 South 1st, Unit L

City: Austin State: TX Zip: 78704

Phone (will be public information): (512) 960-6885

Email (optional – will be public information):

Section 5: Agent Information

Agent Name: Eric Scheibe

Agent Mailing Address: PO BOX 161357

City: Austin State: TX Zip: 78746

Phone (will be public information): (512) 263-0418

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).

Date: 09/09/2019

From: Eric C. Scheibe, PE, CFM (Scheibe Consulting, LLC)

To: Board of Adjustments

Subject: **Oltorf Development – 1400 W Oltorf St.**

To whom it may concern:

This project is located within the city limits of the city of Austin and will be located at 1400 W Oltorf St., Austin, TX 78704. The property is a 0.98 Acre tract of land that is currently considered a legal lot as per a legal lot status determination made by the City of Austin. The property is described below:

0.9752 AC, LOT 13, BLK 1, FREDERICKSBURG ROAD ACRES

This development is subject to the review and permitting by the City of Austin. This tract currently has residential structures that are to be removed, with the goal of constructing one new commercial building. The zoning of this site is CS.

The property to the southwest is approximately 0.28 acres and located fully within W Bouldin Creek. It is owned by the city and is zoned SF-3, the only lot in along W Oltorf between S Lamar and the MO-PAC railroad that is zoned this way. This property will likely never be developed due to its size and location. On the south of this property lies MO-PAC railroad tracks, and another CS zoned property. The setbacks and height restrictions associated with developing a property adjacent to this property are therefore misrepresented. We are requesting that no setback and height restrictions are associated with this property.

Please let us know if you have any questions. We can be reached at (512) 263-0418.

Thanks,



Eric C. Scheibe, PE, CFM
Scheibe Consulting, LLC
TBPE FIRM #13880
PO BOX 161357
Austin, TX 78716



Enclosures:

1. Board of Adjustment General Variance Application
2. Site plan



1400 W. Oltorf St.

Approaching Property from
North (facing South)

1404

Legend Exit Street View

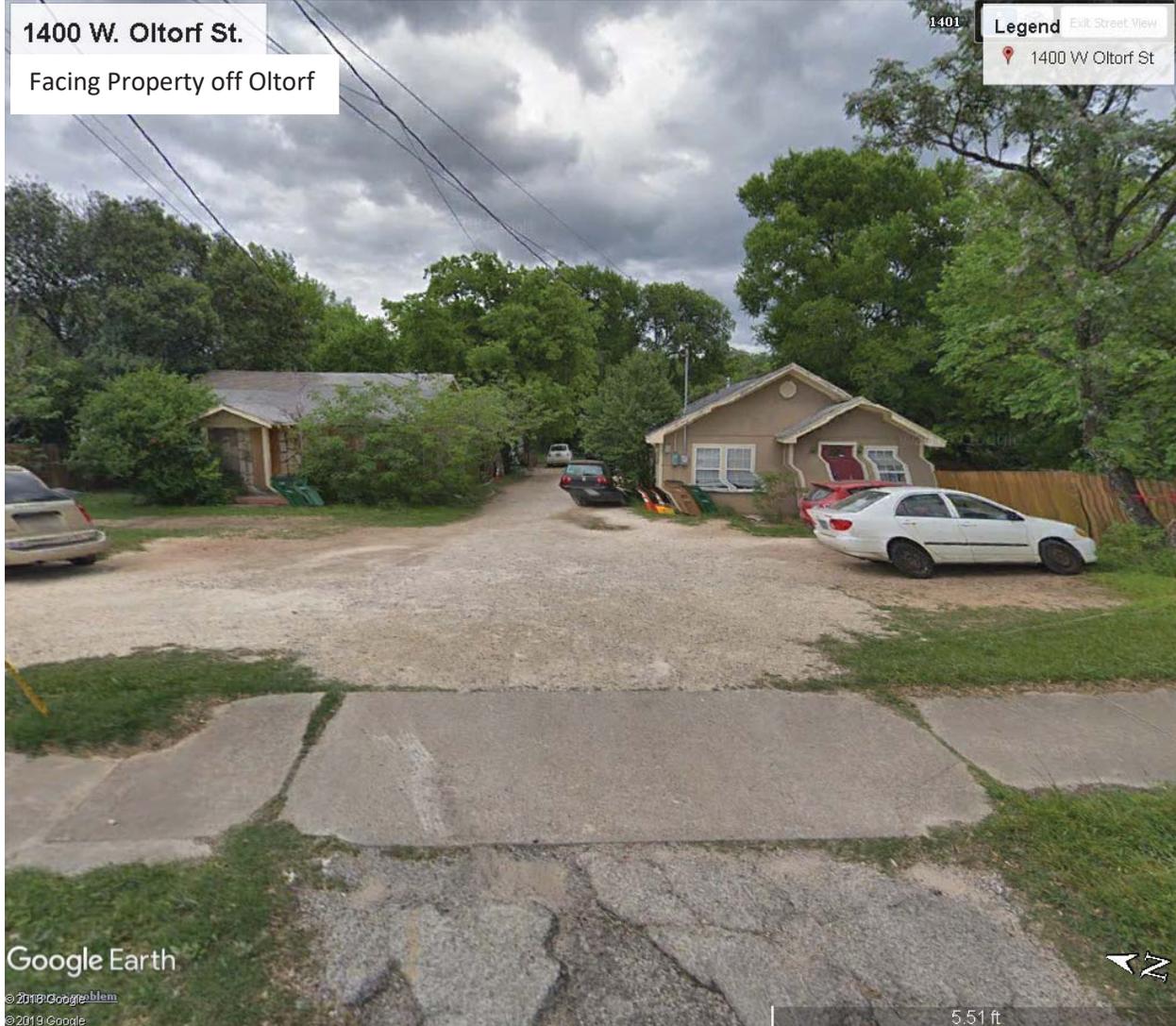
1400 W Oltorf St



Google Earth

© 2019 Google

5.87 ft





1400 W. Oltorf St.

Facing West (opposite) from property.

1401

Legend [Exit Street View](#)

 1400 W Oltorf St



Google Earth

© 2018 Google
© 2018 Google

6.11 ft



Oct. 10, 2019

Re: Case C15-2019-0056
1400 W Oltorf, Austin TX 78704

To the Board of Adjustment:

The Zoning Committee of the Zilker Neighborhood Association has reviewed the variance request. We previously reviewed a similar request in 2014, before it was withdrawn, and the latest site plan application SP-2019-0210C, submitted about six months ago and now listed as inactive.

We have attached a selection of staff comments concerning various drainage and floodplain issues on the site plan. Based on these comments and our previous experience with this site, we believe that any variance application is premature, as long as the site does not meet the requirements for a Redevelopment Exception and any increase in the impervious cover is prohibited. The most that can be allowed on this site is preservation of the existing building that is not in the floodplain; any expansion of the commercial space is likely to require additional parking and impervious cover, which is currently not permitted in the floodplain. Regardless, the floodplain variances are not within the Board of Adjustment's purview.

Under the circumstances, the ZNA Zoning Committee must oppose this variance. We request that the Board of Adjustment deny the variance.

ZNA appreciates your service to our community.

David Piper,
President, Zilker Neighborhood Association

From Master comments for 1400 W Oltorf site plan SP-2019-0210C, June 2019 (inactive)

Drainage review:

It appears that there are concentrated flows and/or floodplain through the property. [LDC 25-7-152] A drainage easement is required to the limits of the 100 year fully developed flow elevation. A drainage easement will be required. Please submit the easement with exhibits to this reviewer for processing.

The proposed development does not meet the requirements for Redevelopment Exception under LDC 25-8-25. Per LDC 25-8-25(C)(1), the redevelopment [must] not increase the existing impervious cover. The existing impervious cover is 18.6% and 1.9% within the Critical Water Quality Zone, the proposed development will increase the impervious cover to 27.3% and 1.4% within the CWQZ. The project may apply LDC 25-8-42(B)(2) if all conditions are met under this section.

Reviewer Notes: Site is located on the NW corner of Oltorf at West Bouldin Creek. A portion of the property is within the FEMA floodplain per FIRM 48453C0585H effective date 9/26/2008. WSELs which affect the site are as follows: 25yr: upstream 543.72, downstream: 538.55; 100yr: upstream: 544.32, downstream 539.42; 500yr: upstream: 545.20, downstream: 540.38. The development as shown has a small portion of the proposed building located in the 100-yr floodplain, because of this, it may count as a floodplain modification and will need to be approved by ERM review. As currently shown, site will require a floodplain variance to be developed unless building encroachment is removed from the floodplain.

FYI: Please note that the current floodplain regulations require that the FFE of the proposed buildings adjacent to the 100-year floodplain must be 1' greater than the 100-year WSEL. City of Austin staff has proposed changes to the floodplain regulations to require FFE's be 2' above the current FEMA 500-year floodplain or Atlas 14 100-yr floodplain. FFE requirements will be based on current code at time of application.

FP10. The proposed development as submitted will require a floodplain variance. A variance may be avoided if encroachments are removed from the floodplain. Comment will be cleared when plan has been brought into compliance with current code and criteria or a floodplain variance has been granted.

The site plan currently shows parking encroaching into the 100-year and 25-year City of Austin regulatory floodplains. Per LDC 25-7-92, parking is not allowed to encroach in the 100-year floodplain UNLESS it qualifies under the exceptions in LDC 25-7-93.A and is in compliance with LDC 25-7-95. No parking is allowed in the 25-year floodplain.

- a. Please adjust site plan accordingly to remove the parking spaces in the 25-year floodplain
- b. Please provide calculations showing the average depth and maximum depth of flooding in the parking spaces in compliance with 25-7-95.B.

It is recommended that the Applicant and the Applicant's Engineer discuss flood resiliency and alterations which could be made to plan to reduce the risk of flooding of the proposed development (e.g. elevation of Finished Floors to be above current 500-year floodplain, floodproofing of areas below current 500-year floodplain, utilizing 500-year floodplain in place of the 100-year floodplain, etc.