



CITY OF AUSTIN

Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

C15-2016-0126

I/1

Board of Adjustment Interpretations Application Appeal of an Administrative Decision

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: 7100 US Highway 290 West, Austin, Texas

Subdivision Legal Description:

Lot 3, Block A, Scenic Brook West Commercial Subdivision, a subdivision in the City of Austin,
Travis County, Texas

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

Outlot: _____ Division: _____

Zoning District: _____

I/We Courtney Mogonye on behalf of myself/ourselves as
authorized agent for Cielo Paso Oak Hills, L.P. affirm that on
Month December, Day 5, Year 2016, hereby apply for an interpretation
hearing before the Board of Adjustment.

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Development Services Department interpretation is:

The conditional overlay of Ordinance #94117-E limited the total allowed FAR of 0.21 to 1 on the Property as currently configured or as may be reconfigured in the future. Staff calculated the FAR as the Property exists presently and failed to include a portion of the property that had been condemned by TXDOT.

I feel the correct interpretation is:

The conditional overlay of Ordinance #94117-E limited the total allowed FAR of 0.21 to 1 on the Property as it existed on the date the ordinance was adopted. The Ordinance specifically stated that the Property was all of Lot 3 as it was configured on the date of adoption of the Ordinance. As such the total FAR in square feet would not be diminished by the condemnation.

Section 2: 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.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

Staff does not believe that the ordinance should be strictly construed. The language of the ordinance states that the FAR is 0.21 to 1 of the Property. The ordinance defines Property as Lot 3, Block A, Scenic Brook West Commercial Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 78, Pages 71-72, of the Plat Record of Travis County, Texas. There is no provision allowing for reduction of FAR.

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

This request does not change any use provisions. This variance request only affects the performance standards that are set forth in the conditional overlay and the methodology in calculating compliance with those standards.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

If part of the allowed 45,555 square feet (the calculated FAR for the Property at time of adoption of the Ordinance) were included in the right of way which was condemned by TXDOT, then Section 25-8-23 would allow the total square feet of floor area taken to be rebuilt on the remainder property.

71
9

Section 3: Applicant/Aggrieved Party 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: _____ Date: 08/25/2016

Applicant Name (typed or printed): Gabe Bruehl

Applicant Mailing Address: 105 W. Riverside, Ste. 110

City: Austin State: Texas Zip: 78704

Phone (will be public information): (512) 439-0400

Email (optional – will be public information): gabe@kbge-eng.com

Section 4: Owner Information

Owner Name: Cielo Paso Oak Hills, L.P.

Owner Mailing Address: 6500 Montana Ave

City: El Paso State: Texas Zip: 79925

Section 5: Agent Information

Agent Name: Courtney Mogonye (Sprouse Shrader Smith PLLC)

Agent Mailing Address: 1250 S. Capital of Texas Hwy., Bldg. 3, Ste. 601

City: Austin State: Texas Zip: 78746

Phone (will be public information): (512) 615-6652

Email (optional – will be public information): courtney.mogonye@sprouselaw.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).

As stated above, the Property is subject to a conditional overlay that was provided in Ordinance #94117-E, which states that the FAR is 0.21 to 1 of the Property. During redevelopment plan review on the above referenced Property Staff determined that the calculation of the FAR does not include the 0.4143 acres that was condemned by Texas Department of Transportation. As such, Staff defined the property as all of Lot 3, Block A, Scenic Brook West Commercial Subdivision less and except that portion of the condemned property that is now the TXDOT right of way. By excluding the portion of the Property that had been condemned, Staff reduced the maximum FAR from 45,555 square feet to 41,713 square feet.

We believe that we are entitled to the maximum FAR of 0.21 to 1 of the Property as it was defined in the Ordinance. The Ordinance prescribed a finite amount of building area and did not

11/10

Additional Space (continued)

include any limitation language that would allow for a reduction of the total floor area allowed on the Property in the event of condemnation. The Ordinance is a legislative act that was unambiguous and, therefore, must be strictly construed. Furthermore, nothing in the condemnation order by TXDOT stated that the total amount of FAR would be reduced, nor is there any evidence the owner was provided with consideration for the reduction in the FAR.

Additionally, if any portion of the 45,555 square feet of floor area were located in the condemned right of way, then the owner would be allowed to rebuild the portion taken on that portion of the property located outside of the right of way pursuant to Section 25-8-23 of the Austin City Code.

If you determine that Staff did not err in its interpretation of the Ordinance, then we ask for a variance. The Staff's interpretation of the Ordinance does not allow for a reasonable use of the Property as there is an existing structure that is 42,000 square feet, which is more than Staff's determination of allowable FAR, and prevents additional structures from being placed on the Property. Staff's interpretation also creates a hardship on the Property as it does not allow for additional development in accordance with the Ordinance and is not consistent with the intent of the Land Development Code which recognizes the right to rebuild the impervious cover taken on the remainder parcel. The variance will not alter the character of the area because if part of the allowed 45,555 square feet (of calculated FAR) on the original Property had been located in the right of way which was condemned by TXDOT prior to the condemnation, then Section 25-8-23 would have allowed the total square feet allowed under FAR to be built on that portion of the Property located outside of the right of way.

SAVE



SPROUSE SHRADER SMITH PLLC
ATTORNEYS AT LAW

COURTNEY E. MOGONYE
(512) 615 6652

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December 5, 2016

Ms. Leane Heldenfels
Development Services Department
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Re: Board of Adjustment Variance Application 7100 US Highway 290 West, Austin,
Texas (the "Property")

Dear Ms. Heldenfels:

The undersigned's firm represents Cielo Paso Oak Hill, LP, Owner of the Property. Please accept this letter and the enclosed application materials as our formal submittal for a Board of Adjustment Interpretation Application. The project site is located at 7100 US Highway 290 West. Included for your review are the application, site plan and Ordinance No. 94117-E.

The Owner of the Property is proposing to place a restaurant on a portion of the 4.5579 acre lot that is almost 100% impervious cover. The plan is to build 2,283.70 square feet fast food restaurant on a 0.96 acre portion of the asphalt parking lot and to provide a sedimentation/filtration pond that would capture runoff from the entire 4.5579 acre lot. Currently there is not a water quality pond available to this site. This is a redevelopment project bringing water quality to an Edwards Aquifer Zone property that currently has no water quality.

We are requesting that the Board interpret the conditional overlay language of the site specific Ordinance No. 94117-E, as discussed in the application, to apply to the entire Property as it is defined in the Ordinance, including that portion of the Property that was condemned by Texas Department of Transportation.

As noted in the Application, Texas Department of Transportation condemned a total of 0.4143 acres of the 4.9722 acre platted lot. None of the existing building square footage was taken within this condemnation. The condemnation occurred five years after the conditional overlay limited the floor to area ratio to .21 to 1. There are existing structures on the Property which total 43,200 square feet. The original maximum FAR on the platted property prior to condemnation was 45,483.7 square feet. After the condemnation the maximum FAR would be reduced to 41,713 square feet if the take-tract is not included in the determination of the ratio. As it stands, no additional structures may be built on the Property if the FAR is not increased. The planned restaurant is 2,283.70 square feet, which is the remaining square footage that would be allowed had the 0.4143 acre portion not been condemned.

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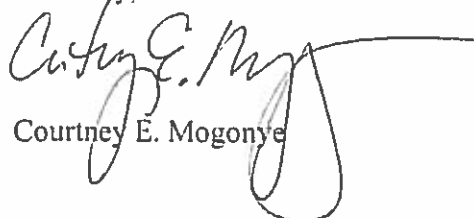
Actual site area impervious cover will actually be slightly reduced with this project as the limits of construction area is currently all excess asphalt parking.

Staff has determined that the conditional overly provision is limited to the total allowed FAR of 0.21 to 1 on the Property as it is currently configured post condemnation, and not as the Property was described in the Ordinance. During the redevelopment plan review on the site plan (SP-2015-0386C, which has since expired), Staff previously interpreted the ordinance to mean the conditional overlay provision is limited to the total allowed FAR of 0.21 to 1 on the Property as it is currently configured or as may be reconfigured in the future. Staff calculated the FAR as the Property exists presently and failed to include a portion of the Property that had been condemned by Texas Department of Transportation. We agree that Ordinance No. 94117- E limited the total allowed FAR of 0.21 to 1 on the Property; however, we do not agree that the FAR should be 0.21 to 1 of the Property as currently configured or as it may be reconfigured in the future. Instead, we think that the "Property" as described in the Ordinance is clear and unambiguous, and includes the entire lot prior to condemnation.

If this interpretation request is not granted, we are requesting that we be allowed to submit a request for variance, and it be issued, allowing us to increase the FAR on the Property. A variance request will result in a reduction in overall impervious cover and new water quality on the entire 4.5579 acre currently developed tract. The zoning ordinance at issue included a conditional overlay regarding F.A.R. This is nothing more than a site specific performance standard to a typical zoning district specification that is well within the scope of variances from zoning requirements authorized by Chapter 211 Local Government Code. Therefore, we have standing to bring this request before the Board of Adjustments pursuant to state law.

If you have any additional questions or concerns regarding this application, please contact me or the applicant, Gabe Bruehl.

Sincerely,



Courtney E. Mogonye

cc: Mr. Gabe Bruehl
Mr. Tyler Buckler
Mr. Greg Guernsey



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13

August 25, 2016

Ms. Leane Heldenfels
Development Services Department
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Board of Adjustment Chair and Members
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Re: Board of Adjustment Application 7100 US Highway 290 West, Austin, Texas
(the "Property"); Standing to Appeal Status Letter

Dear Ms. Heldenfels and Members of the Board:

Please accept this letter and application materials as our formal submittal for a Board of Adjustment Appeal of an Administrative Decision. The project site is located at 7100 US Highway 290 West. Included for your review are the application and the site plan.

We, Cielo Paso Oak Hill, LP, are the record owner of the Property that is the subject of this application. We are proposing to place a restaurant on a 0.96 acre portion of a 4.5 acre lot that is almost 100% impervious cover. The plan is to build 2,355 square foot fast food restaurant on a 0.96 acre portion of the asphalt parking lot and to provide a sedimentation/filtration pond that would capture runoff from the entire 4.5 acre lot. We are requesting that the Board find that the conditional overlay language of Ordinance No. 94117-E, as discussed in the application, be limited to the total allowed floor area ratio ("FAR") of 0.21 to 1 on the Property as it existed on the date the ordinance was adopted. During the redevelopment plan review on the site plan (SP-2015-0386C), Staff interpreted the ordinance to mean the conditional overlay provision is limited to the total allowed FAR of 0.21 to 1 on the Property as it is currently configured or as may be reconfigured in the future. Staff calculated the FAR as the Property exists presently and failed to include a portion of the Property that had been condemned by Texas Department of Transportation. We agree that Ordinance No. 94117-E limited the total allowed FAR of 0.21 to 1 on the Property; however, we do not agree that the FAR should be 0.21 to 1 of the Property as currently configured or as it may be reconfigured in the future. No interpretation of the FAR

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14

limitation provision of the ordinance is authorized or necessary, because the language is unambiguous.

If you have any additional questions or concerns regarding this application, please contact me or the applicant, Gabe Bruehl.

Sincerely,



Agent – Cielo Paso Oak Hill, LP

cc: Mr. Gabe Bruehl
Mr. Terry Irion

07.21

GARY ROBERTS, JR.

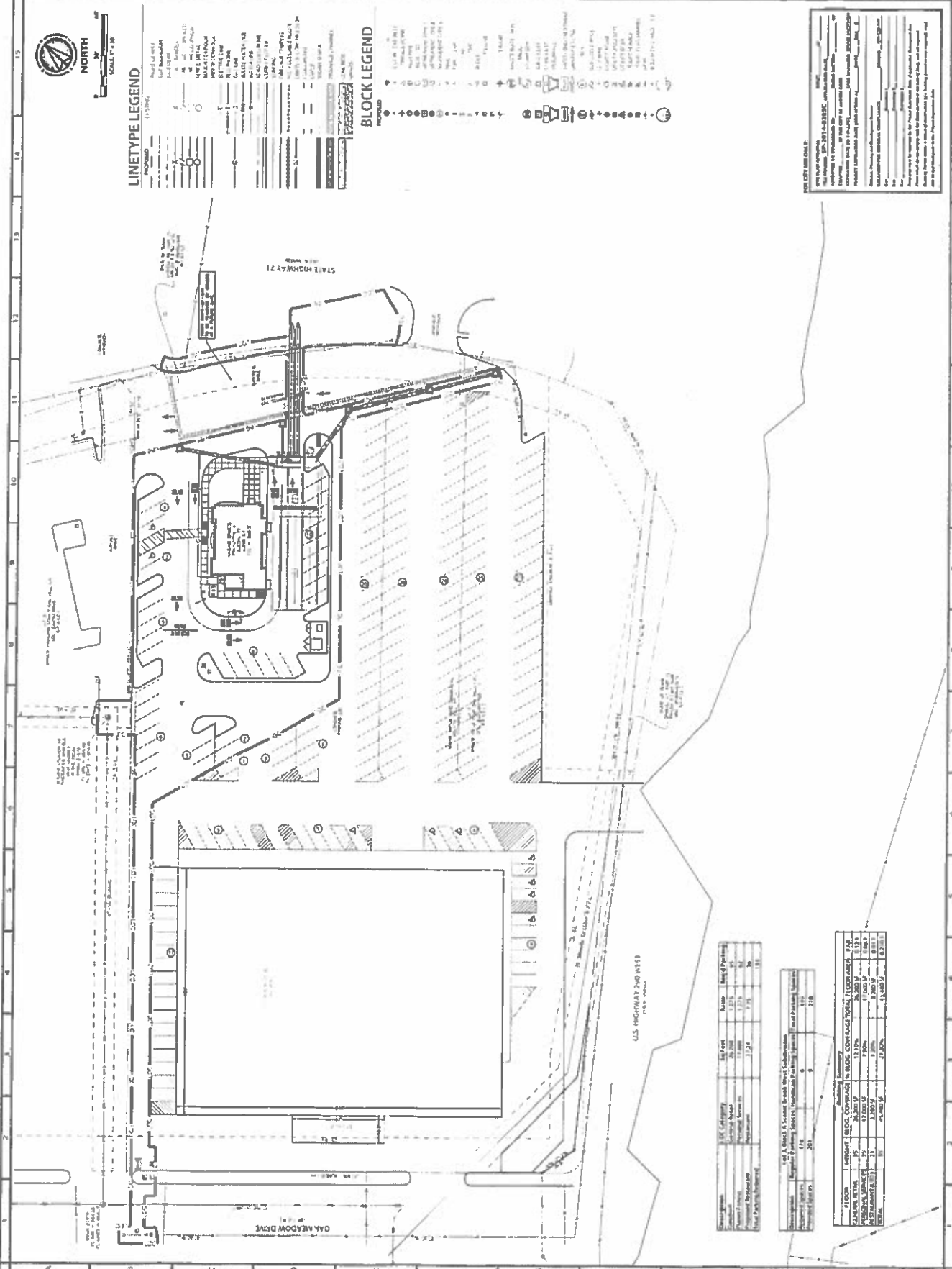


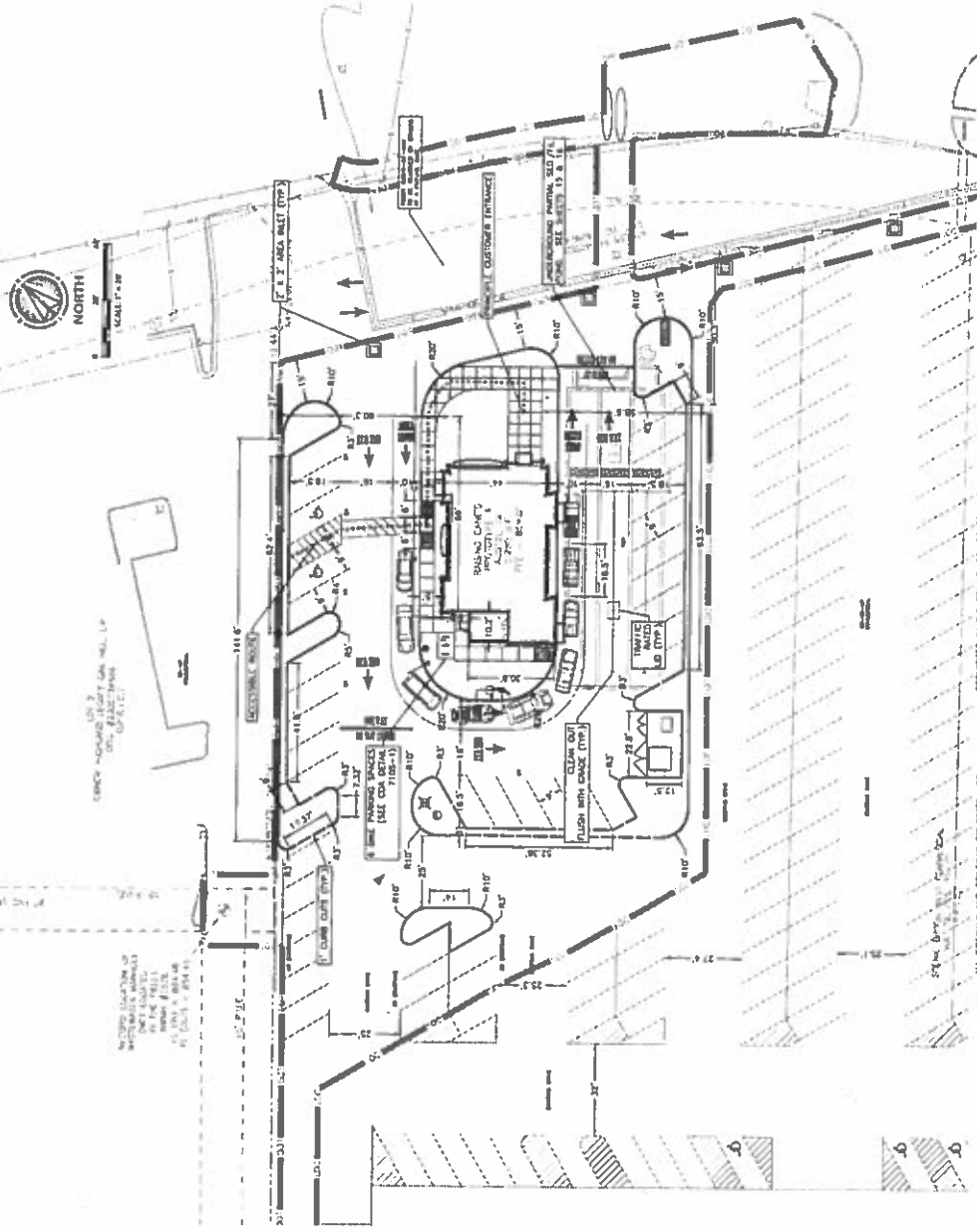
October 14, 2016

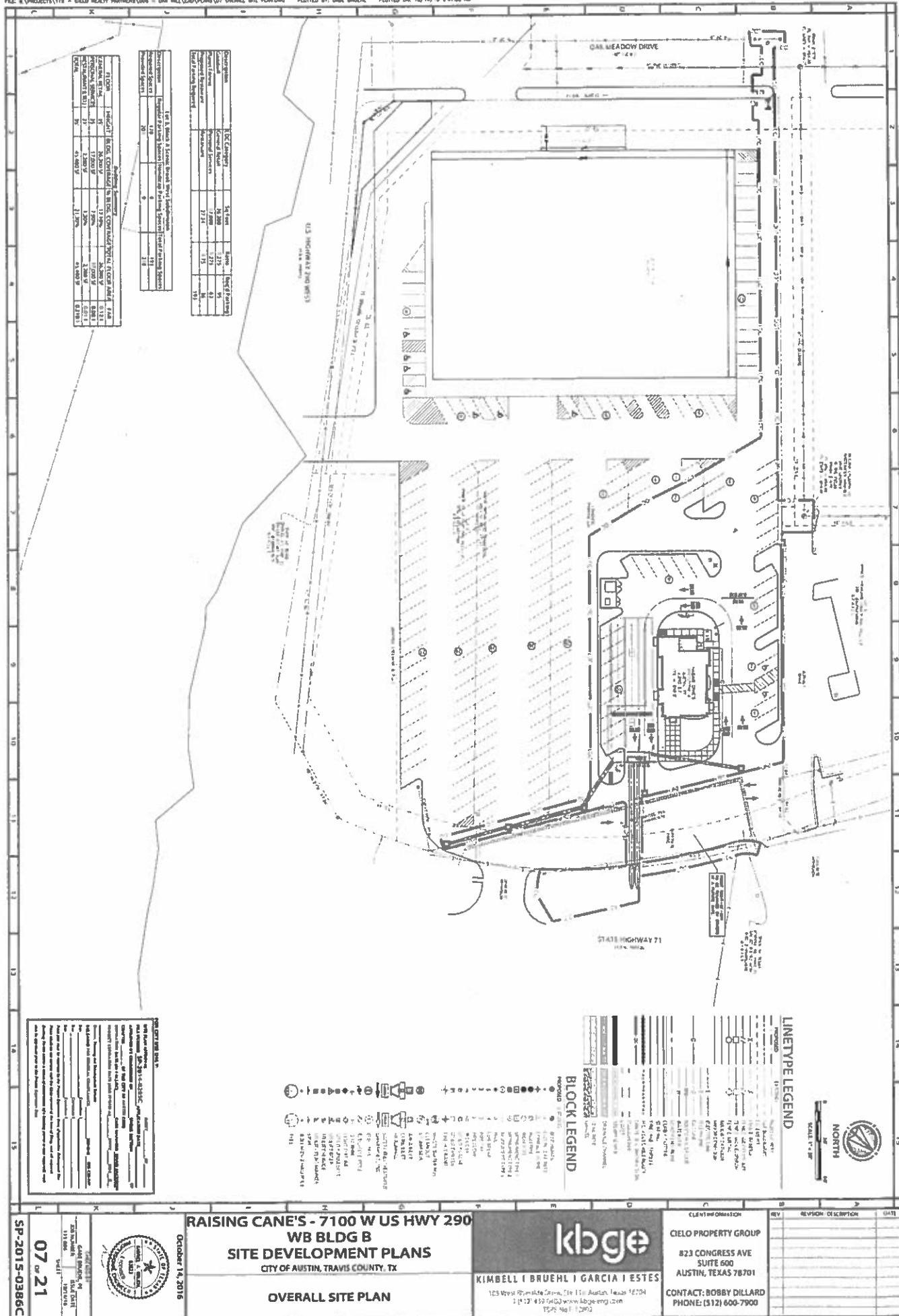
RAISING CANES - 7100 W US HWY 290
WB BLDG B
SITE DEVELOPMENT PLANS
CITY OF AUSTIN, TRAVIS COUNTY TX
OVERALL SITE PLAN

KIMBERLY I DRUHL I GARCIA I ESTES

CIELD PROPERTY GROUP
823 CONGRESS AVE
SUITE 600
AUSTIN, TEXAS 78701
CONTACT: BOBBY DILLARD
PHONE: (512) 600-7900

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CHECKED BY: GABE BRUEHL, PE	
JOB NUMBER: 115-006	ISSUE DATE: 06/17/14
SHEET:	
EXHIBIT	

RAISING CANE'S 7100 US HWY 290
CITY OF AUSTIN, TRAVIS COUNTY, TX
AERIAL EXHIBIT

ENGINEERING CONSULTING **kbge**

KIMBELL | BRUEHL | GARCIA | ESTES

105 West Riverside Drive, Ste 110, Austin, Texas 78704
T (512) 432-0400 www.kbge-eng.com
TBPE No.F-12802

CLIENT INFORMATION

CIELO
REALTY PARTNERS

CIELO REALTY PARTNERS
720 BRAZOS ST., SUITE 520
AUSTIN, TEXAS 78701
PHONE: 512-600-7900

12/5

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed application. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice will be sent.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern *(it may be delivered to the contact person listed on a Notice)*; or
- appearing and speaking for the record at the public hearing;

and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;

- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.austintexas.gov/devservices

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. All comments received will become part of the public record of this case.

Case Number: C15-2016-0126, 7100 US HWY. 290 West

Contact: Leanne Heldenfels, 512-974-2302, leanne.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 12th, 2016

Richard L. Schroeder, Sr.
Your Name (please print)

☒ I am in favor
☐ I object

7100 W. Hwy 71 ± H-3 Austin, TX
Your address (as reflected by this application) 78735



Signature

Date

Daytime Telephone: (512) 499-8300

Comments:

Comments must be returned by noon the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mailing: City of Austin-Development Services Department/ 1st Floor

Leanne Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the next prior to the hearing to be received timely)

Fax: (512) 974-6305

Email: leanne.heldenfels@austintexas.gov

PUBLIC HEARING INFORMATION

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- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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Case Number: C15-2016-0126, 7100 US HWY. 290 West
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, December 12th, 2016

JOHN SHINSKI

Your Name (please print)

☐ I am in favor
☒ I object

7101 Hwy 71 West Austin, TX 78735
Your address (as depicted by this application)

[Signature]

Signature

Date

Daytime Telephone: (512) 829-4624

12-5-2016

Comments: I have been in this center for over 20 years, AS A business owner. As is there is not enough parking space for all of us. We have all operated under this Ordinance and it has served us well. Adding another business will cause parking problems for us all.

Comments must be returned by noon the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be received timely)

Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov