



**ITEM FOR ENVIRONMENTAL COMMISSION AGENDA**

COMMISSION MEETING DATE REQUESTED: October 17, 2018

NAME & NUMBER OF PROJECT: 2001 S. 1st Street  
SP-2018-0017C

NAME OF APPLICANT OR ORGANIZATION: Casey Giles, PSW real estate, LLC, 512-294-3609

LOCATION: 2001 S 1st St., Austin, TX, 78704

COUNCIL DISTRICT: District 9

PROJECT FILING DATE: February 9, 2018

DSD/ENVIRONMENTAL STAFF: Pamela Abee-Taulli, Environmental Review Specialist Senior, 512-974-1879, pamelaa.abee-taulli@austintexas.gov

WATERSHED: East Bouldin Creek, Urban, Desired Development Zone

ORDINANCE: Watershed Protection Ordinance

REQUEST: Variance request is as follows:  
1. Request to vary from 25-8-261 to allow a portion of the driveway to be constructed in the critical water quality zone.

STAFF DETERMINATION: Staff recommends approval, with the following condition: that applicant work with Wetland Biologist reviewer to provide enhanced critical water quality zone improvements.

REASONS FOR DETERMINATION: Findings of fact have been met.



## MEMORANDUM

**TO:** Linda Guerrero, Chair and Members of the Environmental Commission

**FROM:** Pamela Abee-Taulli, Environmental Review Specialist  
Senior, Development Services Department

**DATE:** October 17, 2018

**SUBJECT:** 2001 S. 1st Street – SP-2018-0017C

On your October 3, 2018 agenda is a request for consideration and possible recommendation for one variance to allow a portion of a driveway to be constructed in the critical water quality zone. [25-8-261]

### **Description of Property**

The subject property is a 0.58 acre platted lot located in the East Bouldin Creek Watershed, which is classified as Urban. The site is not located over the Edwards Aquifer Recharge Zone, is located within the Full Purpose Planning Jurisdiction, and is zoned CS-MU-V-CO-NP. The site is currently developed with three old homes now used as offices. Access is via 2 curb cuts along South 1st Street. East Bouldin Creek runs parallel to South 1st Street, along the back side (east side) of the property. The property currently drains towards the creek.

### **Existing Topography/Soil Characteristics/Vegetation**

The highest elevation on site is 528, and the lowest is 510. The upper half of the property is relatively flat, with slopes averaging about 3% from west to east. The lower (eastern) portion has a much steeper slope, about +/-35%, with Bouldin Creek at the bottom. No disturbance is proposed for any of that area. The creek bottom was determined to contain plants associated with wetlands; applicant is working with the wetlands reviewer to establish a buffer and record an easement to protect the existing wetlands. There are 20 hardwood trees on site, including one heritage. Only 2 of the hardwoods are being removed, totaling 20 inches.

### **Critical Water Quality Zone**

According to City of Austin GIS, the east side of the lot overlaps the buffer (critical water quality zone) for East Bouldin Creek and the 100-year floodplain. In Urban watersheds, the creek buffer for all waterways with a drainage of 64 acres or greater follows the limit of the 100-year floodplain, between a minimum of 50 feet and a maximum of 400 feet from the centerline of the creek.

### **Project Background**

The site plan under review was submitted on February 9, 2018 and proposes construction of a mixed-use development with retail and residential uses and other associated improvements.

**Environmental Code Variance Request**

According to 25-8-261, development is prohibited in the critical water quality zone. The variance request is to allow a portion of a commercial driveway to be constructed in a critical water quality zone.

**Recommendation**

Staff recommends conditional approval of the environmental variance because the Findings of Fact (enclosed herein) have been met. The condition is that the applicant work with the Wetland Biologist reviewer to provide enhanced critical water quality zone improvements.



**Development Services Department  
Staff Recommendations Concerning Required Findings  
Water Quality Variances**

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**Project:** 2001 S. 1st Street – SP-2018-0017C

**Ordinance Standard:** Watershed Protection Ordinance

**Variance Request:** To vary from 25-8-261 to allow a portion of a driveway to be constructed in the critical water quality zone.

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Findings:

**A.** Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development. **Yes. South 1<sup>st</sup> St. is designated as a Core Transit Corridor in the Imagine Austin Comprehensive Plan (IACP), and the site is in close proximity to multiple IACP Centers. That is to say, it is located in a downtown area where the City desires higher density development. However, as a result of the combination of three constraints (safety, Heritage tree, and creek buffer), the site is rendered virtually inaccessible.**

**First, access via Johanna St. (rather than South 1<sup>st</sup> St.) is preferred by the COA Transportation Department in order to limit driveways on South 1st for safety. Second, roughly 100 feet of the 184-foot frontage on Johanna St. is blocked by the critical root zone of a 49” Heritage tree. Thirdly, the Johanna St. frontage is further constrained by 80 feet of floodplain and critical water quality zone (CWQZ).**

2. The variance:
  - a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

**Yes. The need for the variance is bases on the site constraints, and not the development method chosen by the applicant. In addition to access constraints and the presence of the Heritage tree, approximately one third of the site is consumed by the CWQZ, leaving a**

**much smaller than normal portion of the lot to develop. Placing the driveway entirely out of the CWQZ would cause it to encroach into the half-critical root zone of the Heritage tree.**

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

**Yes. Though access is possible from S. 1st Street, it is not desired by COA Transportation. Furthermore, access via South 1st Street would make underground parking impossible, and would force the site to be full surface parking, making for less parking overall, and much less FAR (after losing most of the first floor). (1st Street is higher in elevation than Johanna, so an entry from there would not be able to get down fast enough to do underground parking. The dimensions of the buildable area only leave 110' off 1st street, but over 170' off Johanna) This is the minimum deviation from the code, as it is only about 100sf of encroachment into what is essentially already developed CWQZ (because it is located in the ROW and has been disturbed numerous times for road construction, utility construction/maintenance, etc).**

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

**Yes. The encroached area is very small (roughly 100 square feet), previously developed, and frequently disturbed.**

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

**Yes. The applicant is proposing to do rain water capture as well as pay full fee in lieu for water quality. This will essentially equal 150% treatment.**

**B. Additional Land Use Commission variance determinations for a requirement of Section 25-8- 393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):**

1. The above criteria for granting a variance are met;

**Yes. The code requirement would deprive the applicant of a level of development that is available to similarly situated sites and that is desired by the City. The variance is necessitated by site constraints, not by the development method chosen. Proposed encroachment into the CWQZ is the minimum necessary change, does not threaten environmental harm, and results in water quality that is better than what is required by code.**

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

**Yes. The property is limited by CWQZ and other constraints, and development without the variance would further limit the ability to develop the site in a way consistent with**

**properties on this IACP Corridor. Even with the variance the property will still be developed to less than half its entitlements.**

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

**Yes. The proposed encroachment replaces approximately 100 square feet of pervious surface with impervious surface. The driveway cannot be located further from the CWQZ, because it would then encroach into the half-critical root zone of the Heritage tree.**

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Environmental Reviewer:



Pamela Abee-Taulli

Environmental Officer:



Chris Herrington

Date: September 27, 2018

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Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (Yes)



## ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM



### PROJECT DESCRIPTION

#### Applicant Contact Information

Name of Applicant	Casey Giles
Street Address	2001 S 1 <sup>st</sup> Street
City State ZIP Code	Austin, TX 78704
Work Phone	5122943609
E-Mail Address	<a href="mailto:Casey.giles@pswrealestate.com">Casey.giles@pswrealestate.com</a>

#### Variance Case Information

Case Name	2001 S 1 <sup>st</sup>
Case Number	SP-2017-0265C
Address or Location	2001 S 1 <sup>st</sup> , Austin, 78704
Environmental Reviewer Name	Pamela Abee-Taulli
Environmental Resource Management Reviewer Name	
Applicable Ordinance	LDC 25-8-261
Watershed Name	Bouldin Creek
Watershed Classification	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Water Supply Suburban <input type="checkbox"/> Water Supply Rural <input type="checkbox"/> Barton Springs Zone

Edwards Aquifer Recharge Zone	<input type="checkbox"/> Barton Springs Segment <input type="checkbox"/> Northern Edwards Segment <input checked="" type="checkbox"/> Not in Edwards Aquifer Zones
Edwards Aquifer Contributing Zone	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Distance to Nearest Classified Waterway	65ft
Water and Waste Water service to be provided by	COA/AWU
Request	The variance request is as follows (Cite code references): We request a variance to LDC 25-8-261 to allow a portion of a commercial driveway to be constructed in a critical water quality zone.

Impervious cover	Existing	Proposed
square footage:	14,000 sf	15,000 sf
acreage:	.32 ac	.34 ac
percentage:	55	.59
Provide general description of the property (slope range, elevation range, summary of vegetation / trees, summary of the geology, CWQZ, WQTZ, CEFs, floodplain, heritage trees, any other notable or outstanding characteristics of the property)	<p>The property is 0.58 acres, and currently developed with 3 old homes now used as offices. Access is via 2 curb cuts along South 1<sup>st</sup> Street. Bouldin Creek runs parallel to South 1<sup>st</sup> Street, along the back side (east side) of the property. The property currently drains towards the creek.</p> <p>The highest elevation on site is 528, and the lowest is 510. The upper half of the property is relatively flat, with slopes averaging about 3% from west to east. The lower (eastern) portion has a much steeper slope, about +/-35%, with Bouldin Creek at the bottom. No disturbance is proposed for any of that area.</p> <p>The creek has a large regional wastewater line running down the middle upstream of our site, and continuing downstream of our site. The creek bottom was determined to contain plants associated with wetlands, so we are working with the wetlands reviewer to establish a buffer and record an easement to protect the existing wetlands.</p> <p>There are 20 hardwood trees on site, including one heritage. Only 2 of the hardwoods are being removed, totaling 20 inches.</p>	

<p>Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)</p>	<p>All of the parking will be underground, and will be accessed by a driveway on Johanna. Most of the frontage along Johanna is blocked from development/access by the very large heritage tree on the site, and a majority of the remaining frontage is obscured by the floodplain and Critical Water Quality Zone (a 50' setback off the creek). There is a small area in between, and this is the only available space to place our driveway. However, because of the way the Critical Water Quality Zone (CWQZ) rules are written, the zone actually extends beyond 50' if the floodplain is wider than 50'. In that case, the CWQZ follows the floodplain. And because of the bridge/culverts on Johanna, the floodplain is backed up and balloons outward to almost 100' from the creek in that area, but all within the ROW. Our proposed driveway encroaches into a sliver of this expanded area, and even though the encroachment happens in the ROW at the street, we are still being required to seek a variance from Planning Commission for about 100sf of encroachment.</p>
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**FINDINGS OF FACT**

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

Include an explanation with each applicable finding of fact.

Project:

Ordinance:

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

Yes. Access via Johanna (instead of South First Street) is preferred by the COA Transportation Department in order to limit driveways on South 1<sup>st</sup> for safety, yet almost the entire frontage (about 150') is occupied by the critical root zone of a 49" heritage tree and the Critical Water Quality Zone. This situation is unique where both issues combine to almost completely obscure an entire street frontage of a property.

Placing the driveway out of the CWQZ would cause it to encroach into the half-critical root zone of the tree.

Most properties in this area do not have the artificially expanded CWQZ nor do they have a tree of that size, and certainly not both.

2. The variance:

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

Yes, approximately 1/3 of the site is consumed by the CWQZ, leaving a much smaller than normal portion of the lot to develop. Even with this variance we will still only be able to develop to approximately 45% of our entitled FAR, which is certainly not inappropriate scale.

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

Yes. Though access is possible from S. 1<sup>st</sup> Street, it is not desired by COA Transportation. Furthermore, access via 1<sup>st</sup> Street would make underground parking impossible, and would force the site to be full surface parking, making for less parking overall, much less FAR (after losing most of the first floor), and is less attractive overall. (1<sup>st</sup> Street is higher in elevation than Johanna so an entry from there would not be able to get down fast enough to do underground parking. The dimensions of the buildable area only leave 110' off 1<sup>st</sup> street, but over 170' off Johanna) I believe this is literally the MINIMUM deviation from the code, as it is only about 100sf of encroachment into what is essentially already developed CWQZ (because it is located in the ROW and has been disturbed numerous times for road construction, utility construction/maintenance, etc).

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

Yes, as mentioned above, the encroached area is VERY small, previously developed, and frequently disturbed.

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

Yes. We are proposing to do rain water capture as well as pay full fee in lieu for water quality. This will essentially equal 150% treatment.

B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-422 (Water Quality Transition Zone), Section 25-8-452 (Water Quality Transition Zone), Article 7,

Division 1 (Critical Water Quality Zone Restrictions), or Section 25-8-652 (Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long):

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

Yes. This is a minor variance that allows the utmost and best design/use for the site, which is already very limited by CWQZ and a VERY large heritage tree. Other properties don't have these constraints, and allows development already reduced to below 50% of entitlements by these factors. **Furthermore, the area of CWQZ that will be encroached does not drain directly to the creek, but first to the street, and then to the creek, providing no environmental benefit.**

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

Yes, the property is already limited by CWQZ, and this would further limit the ability to develop the site in a way consistent with properties on this corridor and the Imagine Austin plan.

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

Yes, the property is already limited by CWQZ, and this would further limit the ability to develop the site in a way consistent with properties on this corridor and the Imagine Austin plan. **Even with the variance the property will still be developed to less than half its entitlements.**

\*\*Variance approval requires all above affirmative findings.



## Exhibits for Commission Variance

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