



ITEM FOR ENVIRONMENTAL COMMISSION AGENDA

COMMISSION MEETING DATE: November 16, 2022

NAME & NUMBER OF PROJECT: 1703 N. River Hills Road Marina Reconstruction (W/R SP-2020-0307D)
SP-2022-0167D

NAME OF APPLICANT OR ORGANIZATION: Janis Smith
Janis Smith Consulting, LLC

LOCATION: 1703 River Hills Rd, Austin, TX 78733

COUNCIL DISTRICT: District 10

ENVIRONMENTAL REVIEW STAFF: Pamela Abee-Taulli, Environmental Program Coordinator
Development Services Department
512.974.1879, pamela.abee-taulli@austintexas.gov

WATERSHED: Lake Austin Watershed
Water Supply Rural Classification
Drinking Water Protection Zone

REQUEST: Variance request is as follows:
Request to vary LDC 25-8-261CRITICAL WATER QUALITY ZONE DEVELOPMENT to allow, in the CWQZ of Lake Austin, development of a gasoline fuel line with a dispenser at the dock for re-fueling private boats.

STAFF RECOMMENDATION: Staff does not recommend this variance, having determined that the findings of fact have not been met.

STAFF CONDITION: NA



Development Services Department
Staff Recommendations Concerning Required Findings

Project Name: 1703 N. River Hills Road Marina Reconstruction (W/R SP-2020-0307D)
Ordinance Standard: Watershed Protection Ordinance
Variance Request: Vary LDC 25-8-261 CRITICAL WATER QUALITY ZONE DEVELOPMENT to allow, in the CWQZ of Lake Austin, development of a gasoline fuel line with a dispenser at the dock for re-fueling private boats.

Include an explanation with each applicable finding of fact.

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

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

No The next most recently approved fueling operations in Lake Austin were approved in 1985. In the context of environmental regulation and in the context of the Land Development Code, this does not represent contemporaneous development.

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;

No The variance is necessitated by the applicant's decision to propose development of a fuel line and dispenser in the CWQZ of Lake Austin.

Land-based refueling subject to current Code is required to provide water quality ponds and HMIs (hazardous material interceptors) designed to prevent petroleum products and other contaminants from leaving the site and entering waterways. In contrast, any petroleum spills resulting from the proposed

development would proceed directly into a public drinking water source.

The applicant's decision will not provide greater overall environmental protection than is achievable without the variance. On the contrary, it is staff's view that fuel dispensing operations will decrease environmental protection through spills at the pump and discharges of fuel and oil into the water from the queuing boats.

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

No The marina and business allow reasonable use of the site. And as the fueling station is not necessary for use of the marina or business, it is not necessary for reasonable use of the site.

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

No Due to the toxicity of gasoline fuel, any amount of leakage is a harmful environmental consequence. It is not possible to provide adequate safety measures, such as HMIs, when fueling over the water. Moreover, boats queuing at the fueling station will add to the fuel and oil discharged at the site.

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

No Even following best practices and taking maximum precautions, fuel leaks will happen at the pumping location. The resulting water quality will not be equal to what it would be without the variance.

B. The Land Use Commission may grant a variance from a requirement of Section 25-8-422 (*Water Supply Suburban Water Quality Transition Zone*), Section 25-8-452 (*Water Supply Rural Water Quality Transition Zone*), Section 25-8-482 (*Barton Springs Zone Water Quality Transition Zone*), Section 25-8-368 (*Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long*), or Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), after determining that::

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

No The above findings have not been met. The proposed fueling operation is the applicant's choice, not necessary for reasonable use of the property, and will have a negative impact on the environment, including water quality.


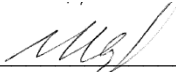
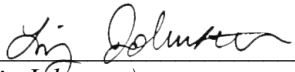
2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property;

No The requirement does not prevent the applicant from a reasonable use of the marina and of the business on the property.

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

No No deviation from the code requirement is necessary to allow a reasonable, economic use of the entire property.

Staff Determination: Staff determines that the findings of fact have / have not been met. Staff recommends the following condition:

Environmental Reviewer (DSD)	 _____ (Pamela Abee-Taulli)	Date <u>9/16/2022</u>
Environmental Review Manager (DSD)	 _____ (Mike McDougal)	Date <u>9/16/2022</u>
Deputy Environmental Officer (WPD)	 _____ (Liz Johnston)	Date <u>10/21/2022</u>



ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM

PROJECT DESCRIPTION

Applicant Contact Information

Name of Applicant	<i>Nikelle Meade and Janis J. Smith, P.E. for YYYYY INC</i>
Street Address	<i>401 Congress Avenue # 2650</i>
City State ZIP Code	<i>Austin, TX 78701</i>
Work Phone	<i>512-472-5456</i>
E-Mail Address	Nikelle.meade@huschblackwell.com , jsmith@janissmithconsulting.com

Variance Case Information

Case Name	<i>1703 N. River Hills Road Marina Reconstruction</i>
Case Number	<i>SP-2022-0167D</i>
Address or Location	<i>1703 N. River Hills Road</i>
Environmental Reviewer Name	<i>Pamela Abee-Taulli</i>
Environmental Resource Management Reviewer Name	<i>Pamela Abee-Taulli</i>
Applicable Ordinance	<i>LDC 25-8-261 Critical Water Quality Zone Development</i>
Watershed Name	<i>Lake Austin</i>
Watershed Classification	<input type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Water Supply Suburban <input checked="" 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	<i>The fuel line and gas pump will be in the CWQZ and over Lake Austin</i>
Water and Waste Water service to be provided by	<i>Austin Water</i>
Request	The variance request is as follows (Cite code references: <i>LDC 25-8-261 Critical Water Quality Zone Development</i>

Impervious cover	Existing	Proposed
square footage:	_____	_____
acreage:	_____	_____
percentage:	_____	_____
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><i>The proposed project site contains an abandoned restaurant, parking lot, bulkhead, existing 18-slip marina (the north dock) and a non-operational fueling station with 3 slips (the south dock) constructed prior to 1965. It was the site of The Pier Restaurant which had been open, in one form or another, from the 1920s to 2005. The 4.46 ac legal parcel on the shoreline of a Lake Austin is shown on Attachment 1, Project Site. The site is zoned CS-1. Except for an access road traversing the property, all of the property elements are on the Lake Austin shoreline. There are a number of trees on the site, but the shoreline is dominated by the restaurant building and flat work that served as a dance floor and restaurant service area. There's a group of trees, some of which are Heritage trees, on the shoreline by the south dock. All fueling infrastructure was removed. Attachment 2 contains pictures of the site. The condition of both boat docks is perilous. The docks were red-tagged in October 2019, and a site plan is required to reconstruct the docks. The proposed project will reconstruct the docks, bulkhead, and a fueling station. It won't reconstruct the restaurant or other facilities. The north dock will have 13 slips, and the south dock will have the capacity to moor 3 boats. By today's permitting requirements, the old structures were a 21-slip marina. The replacement dock will be a 16-slip marina and will replace the existing structures with code-compliant docks within the existing footprints. This variance application for the installation of a gas line and gas pump in the CWQZ is necessary to deliver gasoline from the above-ground storage tank storing gasoline (required to be outside of the CWQZ) to the gas pump on the south dock (over the lake). Attachment 3 contains the Fuel System Layout Sheet (Sheet 9 of the Site Plan set), and Attachment 4 contains the basis of the Findings of Fact.</i></p>	

Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)	<i>Per LDC 25-8-261, a "dock, public boat ramp, bulkhead or marina, and necessary access and appurtenances, are permitted in a critical water quality zone". Per COA reviewers, the gas line and gas pump don't qualify as "necessary" appurtenances to the marina thus don't comply with code.</i>
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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.

☒ No *See Attachment 4, Findings of Fact*

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;

☒ No *See Attachment 4, Findings of Fact*

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

☒ No *See Attachment 4, Findings of Fact*

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

☒ No *See Attachment 4, Findings of Fact*

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

☒ Yes

No

See Attachment 4, Findings of Fact

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

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

☒ Yes

No

See Attachment 4, Findings of Fact

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

☒ Yes

No

See Attachment 4, Findings of Fact

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

☒ Yes

No

See Attachment 4, Findings of Fact

****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

ATTACHMENT 1
PROJECT SITE

1703 N. RIVER HILLS ROAD MARINA RECONSTRUCTION

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 78°14'06" W	41.23'
L2	S 73°25'06" W	8.35'
L3	S 41°23'06" W	15.37'
L4	S 28°17'31" W	9.19'
L5	S 28°02'44" W	240.42'
L6	S 28°01'30" W	179.54'
L7	S 27°23'30" W	39.12'
L8	S 27°51'31" W	45.11'
L9	N 18°18'03" W	261.76'
L10	N 31°53'44" W	195.77'
L11	N 18°00'42" W	119.75'
L12	N 64°42'19" E	41.93'
L13	N 69°58'21" E	421.08'
L14	N 89°10'21" E	127.00'
L15	S 10°42'39" E	208.80'
L16	S 81°23'36" W	78.18'

TIRES MADE EASY INC
ABS 808 SUR 39 WOFFORD W
ACR 10.917 (1-D-1W)
DEED DOC. #2012045404TR
ZONING: LA

TIRES MADE EASY INC
ABS 627 SUR 39 WOFFORD W
ACR 4.4650 (1-D-1W)
DEED DOC. #2008021052TR
ZONING: CS

TIRES MADE EASY INC
ABS 627 SUR 39 WOFFORD W
ACR 22.4500 (1-D-1W)
DEED DOC. #NOT AVAILABLE
ZONING: ILA
USE: XX

COA AND FEMA 100-YR FULLY DEVELOPED FLOODPLAIN/BFE
ELEV = 499.38

EXISTING WETLAND CEF
APPROX. 30.0 SF

UNCOVERED SECOND STORY DECK WITH HANDRAILS

LIMIT OF CONSTRUCTION

EXISTING DOCK FOOTPRINT
INCLUDES THE AREA
OCCUPIED BY BOATS PER
BOAT DATA FROM 1984

APPROXIMATE COLORADO
RIVER GRADIENT
ELEV = 482.0

LAKE AUSTIN

EXISTING 21-SLIP BOAT DOCK
NORTH DOCK CONTAINS 18 SLIPS
SOUTH DOCK CONTAINS 3 SLIPS
214.2' WIDE X 68.1' DEEP
DOCKS AND TO BE DEMOLISHED AND REBUILT
SEE EXISTING DOCK PLAN/ELEVATION VIEWS
ON SHEET 6

EXISTING = PROPOSED SHORELINE LOCATION
ELEV = 492.8'

TRAVIS COUNTY WCID #20
LOT 42 BLK A ROB ROY ON
THE LAKE SEC 1
DEED DOC. #NOT AVAILABLE
ZONING: LA

DRAINAGE EASEMENT
DOC # 2008021051

15' WATERLINE EASEMENT
VOL 11149/665

LEGEND

EXISTING DOCK TO BE DEMOLISHED
EXISTING STRUCTURE TO REMAIN
EXISTING SHORELINE
PROPERTY BOUDARY
CWQZ SETBACK
COA AND FEMA 100-YR FLOODPLAIN
LIMIT OF CONSTRUCTION
EXISTING OVERHEAD POWER LINE
EXISTING POWER POLE

TREE CRITICAL ROOT ZONE

TREES TO REMAIN	
TREE TAG #	SPECIES AND DIAMETER
643	ELM 12
644	ELM 9
645	HACKBERRY 8
646	ELM 12
647	ELM 10
648	ELM 36
649	ELM 12
650	ELM 40
651	HACKBERRY 9
652	PECAN 20
654	PECAN 23
655	HACKBERRY 9
656	HACKBERRY 9
657	HACKBERRY 19
658	HACKBERRY 9
659	PECAN 20
660	PECAN 14
661	HACKBERRY 10
662	HACKBERRY 24
663	HACKBERRY 20
664	PECAN 13
665	PECAN 14
666	PECAN 12
667	HACKBERRY 21
668	HACKBERRY 10
669	PECAN 20
670	PECAN 29
671	HACKBERRY 16
672	HACKBERRY 10

TREES TO REMAIN	
TREE TAG #	SPECIES AND DIAMETER
673	PECAN 15
674	COTTONWOOD 48
675	CYPRESS 25
676	CYPRESS 38
677	CYPRESS 24
678	CYPRESS 23
679	COTTONWOOD 22
681	COTTONWOOD 54
682	COTTONWOOD 30
683	COTTONWOOD 14 12
684	COTTONWOOD 40
685	ELM 34
686	ELM 20
687	CEDAR 13
688	CEDAR 12
689	CEDAR15
690	HACKBERRY 14
691	HACKBERRY 12
692	CEDAR 12
693	ELM 12
694	HACKBERRY 12 10
695	HACKBERRY 12
696	ELM 10
697	ELM 16
698	CHINA BERRY 14
699	LIVE OAK 38 DEAD
700	LIVE OAK 24 18 DEAD
701	HACKBERRY 12
702	HACKBERRY 10
703	HACKBERRY 24

TREES TO REMAIN	
TREE TAG #	SPECIES AND DIAMETER
704	HACKBERRY 8
705	ELM 18
706	LIVE OAK 16 15 DEAD
707	LIVE OAK 18 DEAD
708	LIVE OAK 18 DEAD
709	ELM 12
710	LIVE OAK 36 DEAD
711	HACKBERRY 12
712	ELM 16
713	HACKBERRY 11
714	HACKBERRY 11
715	CHINA BERRY 16
716	CHINA BERRY 10 9
717	LIVE OAK 52 DEAD
718	LIVE OAK 54 DEAD

TREES TO BE REMOVED	
TREE TAG #	SPECIES AND DIAMETER
653	HACKBERRY 27

Janis Smith Consulting, LLC

1505 Westover Road • Austin, Texas 78703 • 512-914-3729
Texas Board of Professional Engineers Registration Number F-16978

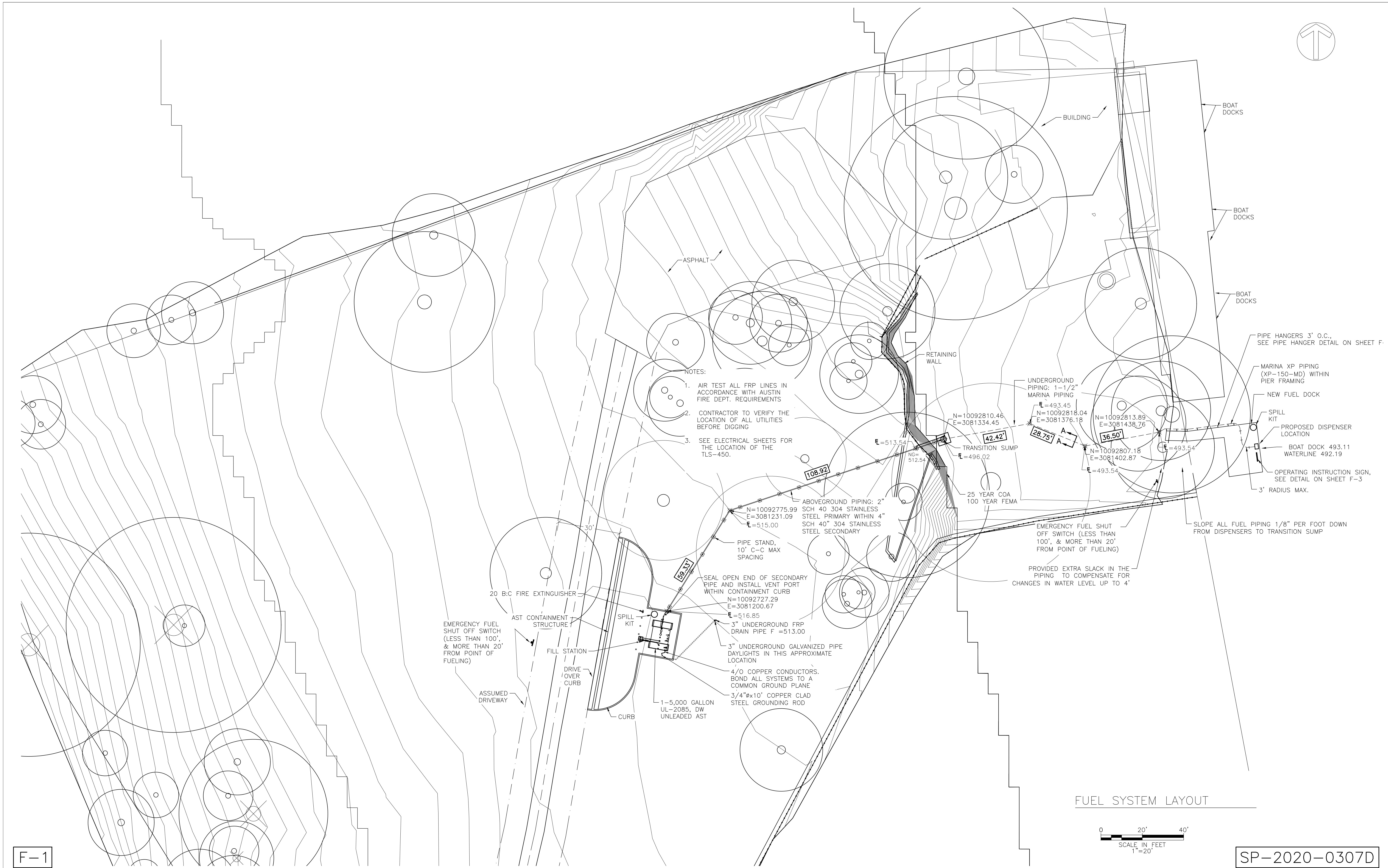
1703 N. RIVER HILLS ROAD
MARINA RECONSTRUCTION
EXISTING CONDITIONS SITE PLAN

DESIGNED: JJS
APPROVED: JJS
SCALE: AS SHOWN
1703 N. RIVER HILLS RD
DATE: 8-03-2020
SHEET 2 of 18

ATTACHMENT 2
SITE PICTURES

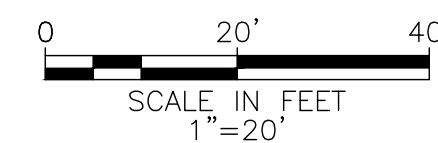


ATTACHMENT 3
FUEL SYSTEM LAYOUT SHEET



F-1

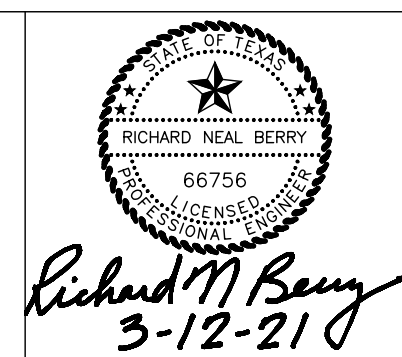
FUEL SYSTEM LAYOUT



SP-2020-0307D

NO	DATE	REVISION

DESIGNED BY	
DRAWN BY	
CHECKED BY	
REVIEWED BY	
DATE	



CDS muery
ENGINEERS | SURVEYORS
100 NE LOOP 410, STE. 300 | SAN ANTONIO, TEXAS 78216
(210) 581-1111 | TBPE NO. F-1733 | TBPLS NO. 100495-00

FUEL SYSTEM LAYOUT

1703 N. RIVER HILLS ROAD
MARINA RECONSTRUCTION
RIVER HILLS ROAD, AUSTIN, TX 78733

SHEET NO. 9
OF 15 SHEETS
FILE NO. 120187

ATTACHMENT 4
BASIS OF THE FINDINGS OF FACT

- A. 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. There's only one fueling station on Lake Austin, and it's at Lake Austin Marina. The aerial photo below of the Lake Austin Marina shows the location of the gasoline AST and the gas pumps at the end of the dock. The lines from the AST to the pumps are in the CWQZ. The tanks were permitted in a 1987 COA permit. The CWQZ development rules applicable for Lake Austin were the same in 1987 as they are today.



2. The variance:
- 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. The gas pump and gasoline transmission lines have to in the CWQZ to fuel boats in the lake.

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

YES. City of Austin staff's instructions were to minimize disturbance to the CWQZ in order to assure that the fuel line installation is "the minimum deviation from the code...". The proposed alignment, and shoreline design in general, is the least possible disturbance to the CWQZ.

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

YES. Per the report issued by the Lake Austin Task Force (LATF), a fueling station is needed in the upstream section of the lake. The only gas station on the lake right now is at the downstream end. So people individually gas up their boats using small portable gas containers requiring multiple fill-ups for a day of boating. Each fill-up can and often does result in a spill in the lake. The proposed fueling station at The Pier is designed to contain any spill occurring at the tank site or in the fuel line; the pump will be manned by a trained attendant servicing boats that can be fully fueled at one time; and the facility will execute a Spill Response Plan if a spill occurs.

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 ability to install gas service at the marina should improve the water quality of the lake. Instead of untrained owners gassing up a boat multiple times for a day of boating, a trained employee can fill-up each boat only once for the same day of boating. It should result in fewer gas spills into the lake. Additionally, the gas tank and line are designed to contain spills occurring at the pump or in the fuel line to the marina, and the facility will execute a Spill Response Plan if a spill occurs.

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

YES. Please see answers to A (1), (2), and (3).

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

YES. This site was a fueling station on the lake for decades. This variance will be required to install any fueling facilities on the lake, including this site.

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

YES. City of Austin staff's instructions were to minimize disturbance to the CWQZ in order to assure that the fuel line installation is "the minimum deviation from the code...". The proposed alignment, and shoreline design in general, is the least possible disturbance to the CWQZ.