THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT RECOMMENDS *DENIAL* OF THIS VARIANCE REQUEST.

SUMMARY OF FINDINGS

1. THE PROPOSED CONSTRUCTION IS IN THE 100-YEAR AND 25-YEAR FLOODPLAINS OF SHOAL CREEK.
2. NO SAFE ACCESS. The depth of water at the curb lines of Sandalwood Cove during the 100-year flood event range from 3.8 to 4.3 feet deep. The structure would be surrounded by approximately 2.1 feet of water. The water depths at the curb lines are significantly greater than the maximum criteria (1.5 feet depth) for access by Austin Fire Department vehicles.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction will increase the opportunity for human occupancy in the floodplain. Living space within the two existing homes is 3991 sq. ft. The proposed house would include 5760 sq. ft. of conditioned space which is 1.44 times the current living area areas even though the number of bedrooms would decrease from seven to four.
4. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The applicant's variance request letter states that the proposed floor elevation would be two feet above the 100-year floodplain elevation. The existing residences are 1.29 ft. and 1.89 ft. below the 100-year floodplain elevation (at 8204 and 8206 Sandalwood Cove respectively).
5. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. Serviceable residences and associated structures exist on the property.
6. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MEET. Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.
7. FLOODING IN AREA. The records for the Memorial Day flood of 1981 indicate several homes were flooded on Daleview Drive (across the creek from the subject properties).

APPLICABLE CODE AND VARIANCES REQUESTED

I. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) to allow encroachment of the proposed structure into the 25-year floodplain.*

II. LDC Section 25-12-3, (Local Amendment to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.3, to allow construction of a structure without normal access by connection with an area that is a minimum of one foot above the design flood elevation. The depth of water at the curb line of Sandalwood Cove during the 100-year flood event will be from 3.8 to 4.3 feet deep. The structure will be surrounded by approximately 2.1 feet of water during the 100-year flood event.*

III. LDC Section 25-7-152 (Dedication of Easements and Rights-of-Way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits

of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to exclude the footprint of the proposed structure from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

IV. LDC Section 25-7-2, Obstruction of Waterways Prohibited prohibits the placement of an obstruction in a waterway.

VARIANCE REQUESTED: *The applicant requests a variance to place a residential structure and garage (obstructions to the flow of floodwaters) in a waterway.*

V. LDC Section 25-12-3, (Local Amendment to the Building Code), Section G102.3 Non-Conforming Uses provides that a structure which was lawful before the adoption of the Building Code, but does not conform with the requirements of these regulations, may be continued subject to the following condition:

1. No such use shall be expanded, changed, enlarged, or altered in a way which increases its non-conformity.

VARIANCE REQUESTED: *The applicant proposes to increase the non-conformance at the subject properties by demolishing existing structures, constructing a new residence with increased living space and thus increasing human occupancy potential.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G 105 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

PREREQUISITE	FINDING
1.) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site. *Insufficient causes for issuing a variance may include the following:* • *Less than a drastic depreciation of property.* • *Convenience of property owner.* • *Circumstances of owner not land.* • *To obtain better financial return.* • *Property similar to others in neighborhood.* • *Hardship created by owner's own actions.*	1.) **CONDITION IS NOT MET.** The entire lot is in the 100-year and 25-year floodplains and unique site size, configuration or topography characteristics have not been demonstrated.
2.) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable; *The location of the floodplain on the property is a characteristic of the land. Hardship refers to the*	2.) **CONDITION IS NOT MET.** Property has two serviceable structures on it. The property is developed now, and does not give rise to exceptional hardship status.

effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3.) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

3.) **CONDITION IS NOT MET.** The proposed structure will not increase floodplain water-surface elevations. The approval of this variance request will, however, increase public safety threat and increase public expense because more occupants will be allowed in harm's way. There is a significant risk to first responders from deep flood waters in the event of an evacuation or rescue attempts.

4.) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

4.) **CONDITION IS NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief.

5.) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

5.) **CONDITION IS MET** because the proposed house floor elevation would be at or above the required regulatory flood datum (100-year floodplain elevation plus one foot).

VARIANCE CONDITIONS

In the event that the variance request is granted, the variance is effective only upon the satisfaction of the following conditions:

1. The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the addition being a minimum of one foot above the 100-year floodplain elevation, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.
2. The applicant must provide a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed structure will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Civil Engineers Manual 24 (Flood Resistant Design and Construction).