

**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 TANNEHILL BRANCH.
2. EMERGENCY RESPONDER ACCESS. For the 100-year flood event the depth of floodwaters will be approximately 3.50 feet at the curb. The proposed structure would be surrounded by 1.12 ft. (front of property) to 1.34 feet (rear of property) of water. The water depths at curb line are not within the limits of access by Austin Fire Department fire apparatus.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction will increase human occupancy in the floodplain.
4. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed construction *meets* City of Austin minimum elevation requirements (proposed elevation is at least one-foot above the 100-year floodplain elevation).
5. FLOODS IN THE VICINITY. The November 16 and 23, 2004 storm events resulted in light to moderate flooding in the lower Tannehill Branch watershed. Street and yard flooding was reported in the 4700 and 4900 block of Sara Drive which is 1200 feet upstream of the subject property. Yard flooding was reported in the 1100 block of Berger Street which is approximately 1000 feet upstream of this property.
6. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MET. The failure to grant the variance will result in hardship by rendering the lot un-developable. Applicant's project and variance requests do not meet two of the five LDC prerequisites for granting floodplain variances.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-7-92 A (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. Access to the building from Richardine Avenue will be within the 100-year floodplain with a depth of 3.50 feet of water at the curb line in front of the proposed structure and a depth of 1.12 to 1.34 feet of water surrounding the structure.*

- 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 structure (an obstruction to the flow of floodwaters) in a waterway.*

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

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.*

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 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

FINDING

1.) **NOT MET.** The entire lot is in the 25-year and 100-year floodplains of Tannehill Branch and unique site size, configuration or topography characteristics have not been demonstrated.

2.) **CONDITION IS MET.** Failure to grant the proposed variance will render the lot undevelopable because of the effect of its location in the floodplain.

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.) **NOT MET.** The proposed addition will not increase floodplain water-surface elevations. The approval of this variance request will, however, increase public safety threat and increase public expense because occupants of the proposed house will be in harm's way. The public safety risk will be increased due to the depths of floodwaters at the curb line of the proposed residence.

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

4.) **CONDITION IS MET.** In this case, the proposed project and variance request is the minimum required 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.*

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 above the required regulatory flood datum (100-year floodplain elevation plus one foot). The applicant's letter of February 9, 2007 indicates that he is willing to build the finished floor at least 1-foot above the 100-year floodplain elevation, or in other words, to 457.72 feet elevation.

VARIANCE CONDITIONS

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

The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the structure, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.

