

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW
DEPARTMENT RECOMMENDS *APPROVAL* OF THIS VARIANCE REQUEST
SUBJECT TO STATED CONDITIONS.**

SUMMARY OF FINDINGS

1. THE PROPOSED CONSTRUCTION IS IN THE 100-YEAR AND 25-YEAR FLOODPLAINS OF SHOAL CREEK.
2. DRY ACCESS. Dry access to the proposed structures will be provided by an ADA accessible aerial pedestrian crossway over Bowie Street connecting upper floors of the proposed structure with an existing multi-story building.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction will increase the opportunity for human occupancy in the floodplain. The proposed structures will be used for office, retail sales and parking.
4. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. Commercial buildings previously existed on the subject property; these buildings were demolished at the owner's discretion. A parking lot is currently in place on the subject property.
5. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MET. Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.

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 and 100-year floodplains.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) and LDC 25-7-92(B) to allow encroachment of the proposed structure into the 25-year and 100-year floodplains.*

- II. 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 structures from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- III. 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 structures (obstructions to the flow of floodwaters) and fill in a waterway.*

IV. LDC Section 25-12-3, (Local Amendment to the Building Code), Section G102.3 Non-Conforming Uses provides that a structure or the use of a structure or premises, 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 the existing parking lot and constructing two multi-story buildings and a parking garage.*

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;

FINDING

1.) **CONDITION IS NOT MET.** The entire property is in the 100-year floodplain and unique site size, configuration or topography characteristics have not been demonstrated.

2.) **CONDITION IS NOT MET.** Property had serviceable building structures on it, but the owner demolished them. The property now has a parking lot on it. Owner's actions with the property do

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 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.

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.*

not give rise to exceptional hardship status for the property.

3.) CONDITION IS SUBSTANTIALLY MET. The applicant's engineer has developed and submitted a floodplain model showing that the proposed structures will not increase floodplain water-surface elevations. The approval of this variance request will, however, increase public safety threat and may increase public expense because more occupants will be allowed in harm's way. This potential additional threat to public safety is however, substantially mitigated by the applicant's proposal to construct an aerial pedestrian crossway to allow safe, dry egress from the proposed structures during the 100-year flood event and the applicant's proposal to dry flood proof the structures to an elevation two (2) feet above the 100-year water surface elevation.

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

- *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 building floor elevation will be two (2) feet above the 100-year floodplain elevation and the sub-elevated parking garage will be dry flood proofed to two (2) feet above the 100-year floodplain.

VARIANCE CONDITIONS

1. The applicant shall submit as a condition of the City of Austin's Certificate of Occupancy issuance(s), a completed Elevation Certificate, signed by a Texas registered professional land surveyor, certifying that the elevation of the finished floor of the first floor, the aerial pedestrian crossway and the entrance(s) and exit(s) to the below-ground parking structure(s) are a minimum of two feet above the 100-year floodplain elevation (666.68 feet MSL).
2. The applicant shall provide certifications by a Texas Registered Professional Engineer that the proposed structures will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the American Society of Civil Engineers Manual 24-05 or subsequent edition (Flood Resistant Design and Construction). The certification attesting to the design of the structures shall be submitted as a condition to the City of Austin Building Permit(s) issuance. The certification attesting to the design and construction of the structures shall be submitted as a condition to the City of Austin's Certificate of Occupancy issuance(s).
3. The applicant shall provide a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed structures have been designed in accordance with "Below-Grade Parking Requirements for Buildings Located in Special Flood Hazard Areas", FEMA Technical Bulletin 6-93, April 1993 or subsequent edition, and "Elevator Installation for Buildings Located in Special Flood Hazard Areas", FEMA Technical Bulletin 4-93, April 1993 or subsequent edition. The certifications shall be submitted as a condition to the City of Austin Building Permit(s) issuance.

4. The applicant shall submit to the City of Austin a Conditional Letter of Map Revision (CLOMR) for review and concurrence. The City of Austin's concurrence with the applicant's CLOMR shall be obtained as a condition of the subject Site Plan approval. The applicant shall obtain Federal Emergency Management Agency (FEMA) approval of the CLOMR as a condition of Building Permit(s) issuance for the subject property. The applicant shall submit to the City of Austin a Letter of Map Revision (LOMR) for review and concurrence. The City of Austin's concurrence with the applicant's LOMR and FEMA's approval of the CLOMR shall be obtained as a condition of the City of Austin's release of Certificate(s) of Occupancy for buildings at the subject property.
5. There shall be placed no obstructions to the flow of water beneath the elevated portions of the proposed buildings other than piers designed and spaced according to the latest edition of the American Society of Civil Engineers Manual 24-05 (Flood Resistant Design and Construction). This condition shall prohibit the placement of obstructions including but not limited to landscaping plantings taller than 18-inches in height, fences, walls, barricades, parked vehicles, benches and other outdoor furniture, etc. beneath the elevated portions of the proposed buildings. The applicant shall execute and record a restrictive covenant in a form acceptable to the City Attorney, obligating the property located at 835 West 6th Street to comply with this condition.
6. The applicant shall be responsible for the perpetual maintenance of the proposed Shoal Creek channel and bridge modifications. The applicant shall execute and record a perpetual maintenance agreement in a form acceptable to the City Attorney, providing for perpetual maintenance as a condition of the City of Austin's Site Plan approval.
7. Notwithstanding City of Austin zoning requirements, the proposed buildings shall not contain residential uses on the first floor nor be converted to solely residential use. The applicant shall execute and record a restrictive covenant in a form acceptable to the City Attorney, obligating the property located at 835 West 6th Street to comply with this condition.