

**ORDINANCE NO. 20070621-150**

**AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 835 WEST 6<sup>TH</sup> STREET FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A RESIDENCE IN THE 25- AND 100-YEAR FLOODPLAIN; AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** This ordinance applies to the construction of mixed use buildings and an underground parking structure located at 835 West 6<sup>th</sup> Street within the 25- and 100-year floodplain described in Site Plan Application No. SP-06-0588C.

**PART 2.** Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.7 (*Conditions for Issuance*). Council finds that the variances granted by this ordinance are the minimum necessary to afford relief, are based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variances granted in this ordinance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**PART 3.** A variance is granted from:

- (A) the prohibition against placing an obstruction in a waterway prescribed by City Code Section 25-7-2 (*Obstruction of Waterways Prohibited*);
- (B) the restriction on construction in the 25- and 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (C) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the footprint of the mixed use buildings and the parking structure from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (D) the requirement that a non-conforming use not be expanded, changed, or altered in a way which increases its nonconformity prescribed by City Code Section 25-12-3, Building Code Section G102.3 (*Nonconforming Uses*).

**PART 4.** The variance granted in this ordinance is only effective if the applicant meets the following conditions:

- (1) Before the City may release the site plan for the proposed structures, the applicant shall execute and record a restrictive covenant, in a form acceptable to the City Attorney, which: (1) prohibits obstructions to the flow of water beneath the elevated portions of the proposed structures other than piers designed and spaced in compliance with the latest edition of the American Society of Civil Engineers Manual 24-05 (*Flood Resistant Design and Construction*), and (2) prohibits residential use of the first floor of the proposed structures.
- (2) Before the City may release the site plan for the proposed structures, the applicant shall execute and record a perpetual maintenance agreement, in a form acceptable to the City Attorney, whereby the owner of the property perpetually maintains Shoal Creek channel improvements and bridge modifications.
- (3) Before the City may release the site plan for the proposed structures, the applicant shall submit to the City a conditional letter of map revision (CLOMR) for review and concurrence. Before the City may issue a Building Permit for the proposed structure, the applicant shall obtain approval of the CLOMR from the Federal Emergency Management Agency (FEMA).
- (4) Before the City may issue a certificate of occupancy for the proposed structures, the applicant shall submit to the City a letter of map revision (LOMR) for review and concurrence.
- (5) Before the City may issue a building permit for the proposed structures, the applicant shall submit to the City a certification by a Texas registered professional engineer or architect certifying that the proposed structures have been designed in accord with FEMA Technical Bulletin 6-93, April 1993 and any subsequent edition, "*Below-Grade Parking Requirements for Buildings Located in Special Flood Hazard Areas*", and FEMA Technical Bulletin 4-93, April 1993 and any subsequent edition, "*Elevator Installation for Buildings Located in Special Flood Hazard Areas*".
- (6) The applicant shall submit to the City certifications by a Texas registered professional engineer certifying that the proposed mixed use buildings and parking 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 24-05 (*Flood Resistant Design and Construction*). The certification regarding design must be submitted before the City may issue a building permit for the proposed structures; the certification regarding construction must be submitted before the City may issue a certificate of occupancy for the proposed structures.

- (7) Before the City may issue a certificate of occupancy for the proposed structures, the applicant shall submit to the City a completed Elevation Certificate certifying the elevation of the finished floor of the first floor of the mixed use buildings, the aerial pedestrian crossway, and the entrances and exits to the parking structure are each a minimum of two feet above the 100-year floodplain elevation, signed by a Texas registered professional land surveyor.
- (8) Before the City may issue a certificate of occupancy for the proposed structure, the applicant shall submit to the City a Flood-Proofing Certificate, certifying that the structure is dry flood proofed to an elevation of two feet above the 100-year floodplain elevation, signed by a Texas registered professional engineer or architect.

**PART 5.** If the project for which this variance is granted does not receive all necessary building permits before July 2, 2009, this variance expires.

**PART 6.** Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services. Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

**PART 7.** This ordinance takes effect on July 2, 2007.

**PASSED AND APPROVED**

\_\_\_\_\_, June 21, 2007

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Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Alan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk