

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

SUMMARY OF FINDINGS:

1. THE PROPOSED CONSTRUCTION ENCROACHES ON THE 25-YEAR AND 100-YEAR FLOODPLAINS OF SHOAL CREEK.
2. ADVERSE IMPACT – FILL IN THE FLOODWAY. With respect to maintenance of floodplain volume storage, the project cannot provide compensatory excavation.
3. SAFE ACCESS. Normal access to the building will have direct connection with an area that is outside the floodplain.
4. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction will increase the opportunity for human occupancy in the floodplain. The proposed development will construct 102,048 sq. ft. of conditioned office, retail and restaurant space in the 100-year floodplain.
5. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed construction *meets* City of Austin minimum elevation requirements (proposed elevation of the commercial office and the parking garage will be at least two-feet above the 100-year floodplain elevation).
6. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. The properties are currently developed with automotive service shop and a commercial office building.
7. 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-year floodplain.

VARIANCE REQUESTED: Pursuant to the applicant's requests, the applicant requires a variance from LDC Section 25-7-92(A) to allow encroachment of a building and parking into the 25-year floodplain.

- II. LDC Section 25-7-94 (Exceptions in Central Business Area) requires that development associated with construction of a building is within the central business area compensates for any floodplain volume displaced by that construction.

VARIANCE REQUESTED: Pursuant to the applicant's requests, the applicant requires a variance to place fill in the floodway and floodplain without compensating with excavation for the floodway and floodplain volume displacement.

- 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: Pursuant to the applicant's requests, the applicant requires 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.

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

VARIANCE REQUESTED: Pursuant to the applicant's requests, the applicant requires a variance to place an obstruction, the proposed structures, 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 of the premises by enlargement, thereby increasing human occupancy potential.

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G105.7 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.*

FINDING

1.) **CONDITION IS NOT MET.** Portions of the lots are inundated during the 25-year and 100-year flood events. The applicant has not demonstrated unique site size, configuration or topography characteristics.

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 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.*
- *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.*

2.) **CONDITION IS NOT MET.** The lots currently have three structures on them that are serviceable. The properties are developed now and do not give rise to exceptional hardship status.

3.) **CONDITION IS MET.** The proposed structures will not increase floodplain water-surface elevations. The proposed development will include a FEMA Letter of Map Revision that will move the 25-year and 100-year floodplain boundaries. Therefore, public safety threat and public expense will decrease because the occupants will be removed from harm's way.

4.) **CONDITION IS NOT MET** because the property has three serviceable buildings, there is economic return now. 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 structures floor elevations will be two-feet above the 100-year floodplain elevation.

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 dedicate an easement as required by 25-7-152 for the portions of the property within the 100-year floodplain (post-project), excluding the footprint of the proposed structures, before the City may issue a Building Permit for construction of either the office building or the parking garage.
2. The applicant shall submit 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) before the City may issue a Building Permit for construction of the proposed office building and parking garage.
3. The applicant shall submit a completed Elevation Certificate certifying the minimum elevations of the finished floors of the structures (including garage) being a minimum 470.5 ft. above mean sea level, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the structure.
4. The Conditional Letter of Map Revision Based on Fill (CLOMR-F) must be approved by the Federal Emergency Management Agency (FEMA) before the site plan can be approved. The Letter of Map Revision (LOMR) must be approved by FEMA before the Certificate of Occupancy can be issued.