

**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 THE KINCHEON BRANCH OF WILLIAMSON CREEK.
2. NO SAFE ACCESS. The depth of water at the curb lines of Latta Drive during the 100-year flood event will be up to 3.9 feet deep. The structure would be surrounded by 4.7 feet of water. The water depths at the curb lines are outside of the limits of 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.
4. A HARDSHIP CONDITION FOR THE PROPERTY DOES EXIST. The property currently has no structure on it, nor is there any indication that any building has ever stood on the lot. Therefore, denial of this variance request would result in exceptional hardship on the property in the form of deprivation of reasonable return on the property.
5. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MET. Overall the 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 and the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) and (B) to allow encroachment of the proposed structure into the 25-year floodplain and the 100-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 lines of Latta Drive during the 100-year flood event will be up to 3.9 feet deep. The structure will be surrounded by up to 4.7 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 single-family residential 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 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.

FINDING

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

2.) **CONDITION IS MET.** Property does not currently have a structure on it and apparently never has had a building on it.

The lot is undevelopable because of its placement deep within the 25-year and 100-year floodplains.

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.*

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.

3.) **CONDITION IS 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 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.) **CONDITION IS MET.** In this case, the proposed project and variance request could be the minimum required to afford relief.

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 addition 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 Engineers Manual 24 (Flood Resistant Design and Construction).
3. The Land Development Code Section 25-12-3 (Local Amendments to the Building Code), Appendix G Flood-Resistant Construction, G103.5 Floodway Encroachment, provides that prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the building official shall require submission of a certification by a Professional Engineer licensed by the State of Texas, along with supporting technical data in accordance with the City of Austin Drainage Criteria Manual, that demonstrates that such development will not cause any increase of the level of the design flood.