

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

### SUMMARY OF FINDINGS

1. THE PROPOSED DEVELOPMENT ENCROACHES ON THE 100-YEAR FLOODPLAIN OF ONION CREEK.
2. NO SAFE ACCESS. The depth of water in Wild Dunes Drive adjacent to the property during the 100-year flood event is up to 5.3 feet deep. The depth of water at the proposed house would be up to 4.1 feet deep. First responder personnel such as EMS and AFD would not have safe access to the house in case of an occupant's emergency during a 100-year flood event. The water depths at the curb lines are higher than the maximum criteria (1.5 feet depth) for access by Austin Fire Department vehicles.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed development will increase the opportunity for human occupancy in the floodplain. The proposed house would add 2,510 sq. ft. of conditioned living space within the 100-year floodplain where no structures currently exist.
4. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed house structure *meets* City of Austin minimum elevation requirements (proposed elevation is at least one-foot above the 100-year floodplain elevation).
5. 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.
6. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MET. The proposed development does not meet Building Code prerequisites for granting a floodplain variance.

### APPLICABLE CODE VARIANCES REQUESTED

- I. Land Development Code Section 25-7-92 Encroachment on Floodplain Prohibited prohibits development of a building or parking area that encroaches on the 100-year floodplain.

**VARIANCE REQUESTED:** *The applicant requests a variance from LDC Section 25-7-92(B) to allow encroachment of a building into the 100-year floodplain. The property's subdivision plat was recorded in 1985, after the 1983 qualifying exemption date, thereby disqualifying the property from the exemption that might allow one building per lot in the 100-year floodplain.*

- II. LDC Section 25-12-3 Local Amendments 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, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The depth of water at the curb line of Wild Dunes Drive during the 100-year flood event will be up to 5.3 feet. The depth of water at the proposed house would be up to 4.1 feet deep.*

- 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 structures (house and garage) 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.*

### **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G 105 Variances, variances shall only be issued by the City Council 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*

#### **FINDING**

- 1) **CONDITION IS NOT MET.** The entire lot is completely inundated during the 100-year flood event. Neither the site itself nor the building permit application demonstrates any unique site size, configuration or topography characteristics.

- 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.

*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.*

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 development will not result in increased flood heights. 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 SUBSTANTIALLY MET.** In this case, the proposed development and variance request may be considered, although a smaller residence may have been proposed, the minimum required to afford relief.

5) **CONDITION IS MET.** The proposed finished floor elevation of the house will be one-foot above the 100-year floodplain. The proposed finished floor elevation of the detached garage will be 3.3 feet below the 100-year floodplain, however, the utilities will be one-foot above the 100-year floodplain elevation. The garage structure will be designed to withstand the forces of the floodwaters.

## **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 and record an easement as required by LDC 25-7-152 for the entirety of the property excluding the footprint of the proposed structures before the City may issue a certificate of occupancy for the proposed residence.
2. The applicant must provide a certification by a Texas Registered Professional Engineer or Architect certifying 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 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 residence.
3. The applicant shall submit and the City shall approve an elevation certificate certifying the finished floor elevation of the house, the elevation of the machinery, and the elevation of utilities in the garage 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.