

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

SUMMARY OF FINDINGS:

1. THE PROPOSED CONSTRUCTION ENCROACHES INTO THE 25-YEAR AND 100-YEAR FLOODPLAINS OF WILLIAMSON CREEK. The 25-year and 100-year floodplain depths in Heartwood Drive at the front of this lot are 2.4 feet and 5.3 feet, respectively. The backyard of the lot has been filled to approximately the same elevation as the front of the lot.
2. THE RETAINING WALL AND FILL CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The floodplain study submitted by the applicant demonstrates that this development causes an increase of 0.06 feet to the 100-year floodplain level, which impacts structures and public right-of-way upstream of the residence.
3. ILLEGALLY PLACED RETAINING WALL AND FILL ARE WITHIN AN EXISTING DRAINAGE EASEMENT. The owner placed the retaining wall and fill in a drainage easement that was created by the plat in 1968 and existed when the owner purchased the property.
4. NO HARDSHIP CONDITION FOR THE PROPERTY EXISTS. The existing house has been on the property since 1977. The house has utility services and is occupied by the applicant. The retaining wall and fill are not required in order for the property to be usable.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. 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:** This variance would exclude the footprint of the existing house from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*
- II. LDC Section 25-7-61 Criteria for Approval of Plats, Construction Plans, and Site Plans provides that a final plat, subdivision construction plan, or site plan may not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property.

***VARIANCE REQUESTED:** This variance is due to the fact that the development causes additional adverse flooding on other property.*
- III. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.4 Activities in riverine flood hazard areas provides that the building official shall not permit any new construction, substantial improvement or other development, including fill, unless the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the design flood elevation at any point that results in additional adverse flooding on other property.

***VARIANCE REQUESTED:** This variance is due to the fact that the development causes an increase in the level of the design flood that results in additional adverse flooding on other property.*

- IV. LDC 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.

VARIANCE REQUESTED: *This variance is due to the fact that the development causes an increase in the level of the design flood.*

- V. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.5.1 Floodway revisions provides that a floodway encroachment that increases the level of the design flood may be considered for a variance only if the applicant has applied for a conditional Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency (FEMA).

VARIANCE REQUESTED: *This variance is due to the fact that the development encroaches into the floodway, causes an increase in the level of the design flood, and the applicant has not applied for or received approval of the required conditional revision to FEMA. This variance would allow Council to consider the floodplain variance before the FEMA revision has been approved.*

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.** The applicant has not demonstrated a cause that justifies the retaining wall and fill on a property that has been in use for more than 32 years.

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.** Failure to grant the proposed variance will not result in any hardship. The property has been in use for more than 32 years and the applicant currently lives in the residence.

3.) **CONDITION IS NOT MET.** The retaining wall and fill increase flood heights and pose additional threats to other private property, citizens, and public safety. Moreover, the unpermitted development conflicts with existing laws and ordinances.

4.) **CONDITION IS NOT MET.** The retaining wall and fill are not necessary in any case. Their existence is not a reasonable use. The owner still has an existing beneficial, reasonable, and productive use of the property without the retaining wall and fill placement.

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 DOES NOT APPLY.** The proposed variance request is for a retaining wall and fill and is not for a building. However, the existing finished floor elevation of the house is below the 25-year and 100-year floodplain levels and is susceptible to flood damage.

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 to the City as required by City Code Section 25-7-152 to the limits of the 100-year floodplain, excluding the footprint of the existing residence. The City may not approve the Site Plan for the placement of fill and retaining wall until the applicant submits all information and documentation necessary for the easement, and the easement as approved by the City Attorney is filed by the applicant in the Official Records of Travis County, Texas.
2. The applicant shall submit a certification by a Texas Registered Professional Engineer or Architect certifying that the retaining wall, fill material, and fence 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 site permit.
3. The applicant shall submit to FEMA the appropriate map revision application, as determined by FEMA for the retaining wall and fill, after the application has been reviewed by the City, and must obtain approval from FEMA. The City may not approve the Site Plan for the placement of fill and retaining wall until the CLOMR has been approved by FEMA.