STAFF RECOMMENDS DENIAL

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 328 HEARTWOOD DRIVE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A RETAINING WALL AND PLACEMENT OF FILL IN THE 25 AND 100-YEAR FLOODPLAINS; ESTABLISHING CONDITIONS FOR THE VARIANCES; 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 a retaining wall, fence, and placement of up to 7.5 feet of fill located at 328 Heartwood Drive within the 25 and 100-year floodplains as described in Site Plan Application No. SP-2008-0091D.

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 additional threats to public safety, extraordinary public expense, 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 requirement in City Code Section 25-7-61 (*Criteria for Approval of Plats, Construction Plans, and Site Plans*) that a site plan not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property;

(B) the easement requirements in City Code Section 25-7-152 *(Dedication of Easements and Rights-of-Way),* to exclude the footprint of the existing residence on the site from the requirement to dedicate an easement to the limits of the 100-year floodplain;

(C) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5 (*Floodway Encroachment*) that development involving floodway encroachment not be approved unless a Professional Engineer

demonstrates that the development will not cause any increase of the level of the design flood;

(D) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.4 (*Activities in Riverine Flood Hazard Areas*) that development not be approved unless the proposed development demonstrates that it will not increase design flood elevation that results in additional identifiable adverse flooding on other property;

(E) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5.1 (*Floodway Revisions*) that no floodplain variance may be considered for a floodway encroachment increasing the level of the design flood until after the applicant has applied for a flood insurance rate map ("FIRM") revision and has received approval of the revision from the Federal Emergency Management Agency ("FEMA"), to allow Council to consider this variance before the applicant has applied for and received approval of the FIRM revision by FEMA; and

(F) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5.7 (*Conditions for Issuance*) that variances shall only be issued upon a determination that the variance will not result in increased flood heights.

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

(A) The applicant shall submit to FEMA the appropriate FIRM revision application, as determined by FEMA, for the retaining wall, fence, and fill, after the application has been reviewed by the City. The applicant shall complete all actions necessary to respond to any review comments by FEMA and to obtain final approval by FEMA. The City may not approve the Site Plan for the placement of fill, retaining wall and fence until the FIRM revision has been approved by FEMA.

(B) 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, fence 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.

(C) The applicant shall submit a certification by a Texas Registered Professional Engineer or Architect certifying that the retaining wall, fill material, and

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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 approve the Site Plan for the placement of fill and retaining wall.

PART 5. This variance expires if the project for which this variance is granted does not receive a released Site Plan and Building Permit before May 4, 2010.

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_____, 2009.

PASSED AND APPROVED

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§
_____, 2009 § _____
Will Wynn
Mayor

APPROVED: _____ **ATTEST:** _____
David Allan Smith
City Attorney

Shirley A. Gentry
City Clerk

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