STAFF RECOMMENDS DENIAL

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 306 HEARTWOOD DRIVE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF AN ENCLOSED GARAGE 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 an enclosed garage at 306 Heartwood Drive within the 25 and 100-year floodplains as described in Building Permit application number 2009-033439PR.

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 increased flood heights, 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 easement requirements in City Code Section 25-7-152 *(Dedication of Easements and Rights-of-Way)*, to exclude the house and attached garage from the requirement to dedicate an easement to the limits of the 100-year floodplain;

(B) the requirement that normal access to the building be by direct connection with an area at least one foot above the design flood elevation prescribed by City Code Section 25-12-3, Building Code Section 1612.4.3 *(Means of Egress*);

(C) the prohibition against expanding, changing, enlarging, or altering a structure in a way which increases its nonconformity prescribed by City

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Code Section 25-12-3, Building Code Appendix G, Section G102.3 (*Nonconforming Uses*); and

(D) the requirement that the lowest floor of a building or structure be elevated a minimum of one foot above the design flood elevation prescribed by City Code Section 25-12-243, Residential Code Section R324.2.1 (*Elevation Requirements*).

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

(A) 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 house and garage. The City may not issue a Certificate of Occupancy for the residence 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.

(B) The applicant shall submit a certification by a registered design professional certifying that the building will withstand the flood forces generated by the 100-year flood in accordance with the latest edition of the American Society of Civil Engineers Manual 24 (*Flood Resistant Design and Construction*) before the City may issue a Certificate of Occupancy for the residence.

(C) The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the structure, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the residence.

PART 5. This variance expires if the project for which this variance is granted does not receive a Building Permit before October 12, 2011.

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.

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PASSED AND APPROVED

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§
_____, 2009 § _____

Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____

David Allan Smith
City Attorney

Shirley A. Gentry
City Clerk

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TM # 44574 Resp Att'y: MIC
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