

Recommendation for Council Action – Backup Information
Floodplain Variance Request – 8225 SH 71 West, Silvermine Plaza

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT WILL NOT INCREASE FLOOD HEIGHTS. The applicant's engineer has demonstrated that the development will not increase flood heights. However, the placement of fill in the floodplain without compensatory volume excavation does have hydrologic impacts, which combined with other areas of floodplain fill, could cause an adverse flooding impact to other properties.
2. THE BUILDING'S FINISHED FLOOR ELEVATION WILL BE ABOVE THE MINIMUM REQUIRED ELEVATION. The proposed bank building will have a finished floor elevation that is more than 3.5 feet above the design flood elevation. The minimum required finished floor elevation is one (1) foot above the design flood elevation. In addition, the parking area and drive aisles will be elevated above the design flood elevation.
3. SAFE ACCESS EXISTS. Normal access to the building by vehicles and pedestrians will be by direct connection to an area that is a minimum of one (1) foot above the design flood elevation.
4. A HARDSHIP CONDITION FOR THE PROPERTY DOES EXIST. The property has been undeveloped since it was platted in 1972. In May 1986, a restrictive covenant was created for the lot, which limits the amount of impervious cover rather stringently to less than allowed by the base zoning district. It would be a hardship for the owners to develop the property in accordance with the current floodplain management regulations.
5. AN APPROVED WATERWAY DEVELOPMENT PERMIT EXISTS FOR THIS PROPERTY. The City of Austin approved a waterway development permit for this property on September 30, 1986, which has not expired. This permit allows the owner to place fill on the property in an amount similar to what is being requested with the current site plan application.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-7-61 (Criteria for Approval of Plats, Construction Plans, and Site Plans) states that a site plan may not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property.

VARIANCE REQUESTED: *The applicant requests a variance to allow the development to not be required to compensate for the entire floodplain volume displaced by the development's fill material in the 100-year floodplain. The applicant has provided information that indicates that the project will not result in increased flood heights.*

- II. LDC Section 25-7-92 (Encroachment on the Floodplain Prohibited) states that a site plan may be approved if a proposed building or parking area encroaches on the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to develop a building and parking area that encroaches on the 100-year floodplain.*

- 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 bank building from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

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.*

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 MET.** The applicant has demonstrated a good and sufficient cause that justifies the proposed development of the site. Development on this property is constrained by the configuration and topography of the site.

2) **CONDITION IS MET.** Failure to grant the proposed variance will render the site plan application disapproved. The property is now undeveloped and is under the constraints of impervious cover limits, driveway location issues, and floodplain regulations.

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 MET.** The proposed development will not result in increased flood heights.

4) **CONDITION IS MET.** Without this variance the site plan application is not in compliance with the floodplain management regulations. However, the owner could currently place fill on the lot legally as per the unexpired waterway development permit.

5) **CONDITION DOES NOT APPLY.** The proposed building will be more than 3.5 feet above the 100-year floodplain elevation.