

**Recommendation for Council Action Backup
Floodplain Variance Request – 419 W. Johanna Street**

SUMMARY OF FINDINGS:

1. THE PROPOSED DEVELOPMENT ENCROACHES ON THE 25-YEAR AND 100-YEAR FLOODPLAINS OF EAST BOULDIN CREEK.
2. THE DEVELOPMENT WILL CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The proposed development will result in fill being placed within the floodplain without providing compensatory cut. In addition, the owner's engineer has submitted engineering models indicating that the proposed developed will increase the level of the 100-year floodplain on other property.
3. NO SAFE ACCESS. The depth of water in W. Johanna Street adjacent to the property and at the existing house during the 25-year and 100-year flood event is 2.3 feet and 3.6 feet deep, respectively. The proposed house is further from Johanna Street than the existing house. First responder personnel will not have safe access to either house during a 100-year flood event.
4. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed development would increase the opportunity for human occupancy in the floodplain by adding 3,256 square feet of conditioned area from the proposed house.
5. PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed house *exceeds* minimum elevation requirements of one-foot above the 100-year floodplain elevation. The proposed finished floor will be 2.0 feet above the 100-year floodplain. The finished floor elevation of the existing house on the lot is 0.2 feet below the 100-year floodplain elevation.
6. A HARDSHIP CONDITION FOR THE PROPERTY DOES NOT EXIST. The residence on the lot is serviceable and habitable without the addition of another residence in the floodplain.

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 also provided information that indicates that the development will result in increased flood heights.*

- II. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits the encroachment of a building or parking area in the 25-year and 100-year floodplains.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) and (B) to allow encroachment of the proposed structure into the 25-year and 100-year floodplains.*

- 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 is requesting a variance to exclude the footprint of the existing and proposed houses from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. 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 the proposed building without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. Most of the lot is within the 25-year and 100-year floodplains. The depth of water for the 25-year and 100-year floodplains at the front of the existing house is approximately 3.6 feet and 2.3 feet deep, respectively.*

- V. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section G102.3 to allow a second single-family residence to be constructed on the lot that does not conform with the City's floodplain regulations.*

- VI. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood- Resistant Construction, G103.4 Activities in riverine flood hazard areas states 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: *The applicant requests a variance to permit the development that will increase the design flood elevation that results in additional adverse flooding on other property.*

- VII. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood- Resistant Construction, G103.5 Floodway Encroachment states 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 is within the floodway and causes an increase in the level of the design flood.*

- VIII. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood- Resistant Construction, G103.5.1 Floodway revisions states 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 map revision to FEMA. The applicant requests a variance to not be required to apply for or receive approval of the conditional map revision to FEMA.*

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

FINDING

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the location of the proposed house. It appears that the building could be placed closer to the property line, which would minimize the encroachment into the floodplain.

2) **CONDITION IS NOT MET.** Failure to grant the proposed variance will not render the lot undevelopable. The property is currently developed and is being used as a single-family residence.

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.*

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 result in increased flood heights. Moreover, the development does increase public safety threat because more occupants could be located on a property without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** The property is currently developed and is being used as a single-family residence. The proposed development could be designed to minimize the encroachment into the floodplain.

5) **CONDITION IS MET.** The applicant has been informed of the hazards of living in the floodplain and the potential increased flood insurance premiums. The finished floor elevation of the proposed building is two-feet above the 100-year floodplain.