

**Recommendation for Council Action – Backup  
Floodplain Variance Request – Boardwalk Trail at Lady Bird Lake**

**SUMMARY OF FINDINGS:**

1. **MODELING ANALYSIS SHOWS ADVERSE FLOODING IMPACT TO OTHER PROPERTY.**  
The development will cause minor increases in flood depths of up to 0.05 feet (0.6 inches) within the project area and extending approximately 3.6 miles upstream. These increases in flood depths will affect City-owned property in addition to private property that is mostly land area currently within drainage easements, inundation easements, or development setbacks. However, there are two buildings that are currently inundated by the 100-year flood that will have increased levels of inundation up to 0.04 feet (0.5 inches).
2. **HARDSHIP CONDITIONS FOR THIS DEVELOPMENT EXISTS.** To the maximum extent practicable, the project design places the trail on land in a manner that does not adversely affect flood levels. The portion of the trail that is over the water is the minimum length practicable and is designed to minimize impacts to flood depths.
3. **THE TRAIL STRUCTURE WILL WITHSTAND THE FORCES OF THE FLOODWATERS.**  
The trail design accounts for the forces of the floodwaters and the trail is designed to withstand those forces with minimal damage.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. 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:*** *The applicant requests a variance to allow the development to be approved in a manner that causes adverse flooding impacts to other properties.*

- II. 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:*** *The applicant requests a variance to allow the development to be permitted in a manner that causes adverse flooding impacts to other properties.*

- III. 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:*** *The applicant requests a variance to allow the project to be permitted without receiving the required certification.*

- IV. 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:*** *The applicant requests a variance to allow the project to request the floodplain variance prior to receiving the conditional FIRM revision from FEMA.*

#### **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G 105 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*

##### **FINDING**

- 1) **CONDITION IS MET.** The applicant has demonstrated good and sufficient cause that the location of the boardwalk portion of the trail over the lake is minimized to the extent practicable.

- 2) **CONDITION IS MET.** In order to provide the citizens of Austin with this mobility bond project, a portion of the trail must be located over the Lake. The length of the boardwalk portion of the trail is minimized to the extent practicable. Failure to grant the variance would mean that the project could not be permitted as designed.

*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 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 would cause increased flood heights of up to 0.05 feet (0.6 inches) to public and private property. Two private buildings that are currently inundated by the 100-year flood will have increased inundation levels of up to 0.04 feet (0.5 inches).

4) **CONDITION IS MET.** Reasonable use of this area for a trail requires this variance. Considering the limitations on development along Lady Bird Lake, the cumulative floodplain effects of future development will be minimal.

5) **CONDITION IS MET.** The applicant is not proposing to develop buildings below the 100-year floodplain.