



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 48
AGENDA DATE: Thu 02/17/2005
PAGE: 1 of 3

SUBJECT: Conduct a public hearing to consider a request for a variance from the Land Development Code to allow construction of a residential condominium in the 100-year and 25-year floodplains of Hancock Branch at 1605 Houston Street.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT: Development Review **AUTHORIZATION:** Joe Pantalione

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary M. Kosut, P.E., 974-3374; Martha Vincent, 974-3371.

PRIOR COUNCIL ACTION: Council approved same variance request on July 18, 2002. Ordinance No. 020718-81.

BOARD AND COMMISSION ACTION:

PURCHASING: N/A

MBE / WBE: N/A

The applicant, Loomis Austin, Inc., on behalf of the property owner, CitySmart Austin, Inc., has submitted a Site Plan Permit application (SP-04-0019C) for new construction of a residential condominium at 1605 Houston Street. The site plan proposes a modification of the site topography to create a channel that will remove a significant portion of the 25-year and 100-year floodplains from the site, leaving an area open for development. Loomis Austin, Inc., on behalf of the property owner, requests variances from the City of Austin Code to allow this construction.

Council approved a substantially identical variance request for this proposed development on July 18, 2002. However, a condition of that variance approval was that this project would receive all necessary permits on or before July 11, 2003. The passing of that date without the requisite building permits rendered the original variance as expired by its own terms and has resulted in the need for this renewed variance request.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
SUPPORTS APPROVAL OF THIS VARIANCE REQUEST.**

The site includes approximately 1.63 acres of land immediately downstream of Houston Street on Hancock Branch of Shoal Creek. The site is largely within the 25-year floodplain and is almost entirely within the 100-year floodplain.

More detailed survey and topographic information acquired by the applicant indicates that the existing regulatory floodplains may be reduced upon review and approval by the Federal Emergency Management

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Published:

Disposition:

Adjusted version published:



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CITY OF AUSTIN
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**AGENDA ITEM NO.: 48
AGENDA DATE: Thu 02/17/2005
PAGE: 2 of 3**

Agency (FEMA). The applicant has partially processed the necessary administrative actions with FEMA in order to reduce the effective floodplain width based on the revised topography. Revision of the floodplain maps will reduce the regulatory burden on properties from North Loop Boulevard to upstream of Houston Street. Additional modifications of the site will further reduce the existing floodplains on the site and on Houston Street and will allow the proposed buildings to be constructed two feet above the 100-year floodplain and the parking areas to be built in compliance with code requirements. Access to the site from Houston Street would be within the 100-year floodplain.

Proposed modifications of the site include a channel to convey flow through the site, fill the site to raise the proposed buildings above the 100-year floodplain, and on-site excavation within a privately-maintained, landscaped area to compensate for the fill and subsequent loss of floodplain storage due to the construction. Floodplain elevations will decrease on one other existing apartment complex and on other single-family lots immediately downstream of Houston Street. The floodplain will increase by 0.6 feet at one location immediately downstream of the site. The area of increased floodplain elevation will remain within the existing channel banks and will not impact any existing buildings or public rights-of-way. The owner of the property that is affected by the increase in flood elevations also owns the existing apartment complex that would benefit by the reduced floodplain elevations adjacent to the proposed site development.

The Watershed Protection and Development Review Department recommends approval of this variance request with the following conditions:

1. The owner shall submit a complete application for Letter of Map Revision (LOMR) to FEMA prior to final acceptance of the proposed improvements.
2. The owner shall complete all actions necessary to respond to any review comments by FEMA and to obtain final approval by FEMA of the LOMR application prior to issuance by the City of a Certificate of Occupancy for the structure.
3. The owner shall obtain written permission for the channel modifications from the property owner adversely affected through an increase in floodplain elevations in a form acceptable to the City Attorney.
4. The owner shall provide a complete Elevation Certificate certifying the elevation of the finished structure, signed by a Texas registered professional land surveyor before the City may issue a Certificate of Occupancy for the proposed structure.

APPLICABLE CODE:

LDC Section 25-7-92 prohibits construction of buildings or parking areas in the 25-year flood plain and restricts encroachment on the 100-year flood plain. (The proposed development will modify the 25-year and 100-year floodplains such that the proposed structure and parking will not encroach into these floodplains, and the parking area will comply with the exceptions for parking areas within the 100-year floodplain.

Building Code, Appendix Chapter 58, Article 8 outlines procedures for consideration of flood plain development and evaluation of variance requests.



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 48
AGENDA DATE: Thu 02/17/2005
PAGE: 3 of 3

PREREQUISITES FOR GRANTING VARIANCES:

Variances shall only be issued upon:

- 1) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 2) Showing a good and sufficient cause;
- 3) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- 4) A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

VARIANCE PROCEDURES:

The City Council shall hear and render judgment on requests for variances from the flood plain management regulations. Variances shall not be issued within any designated floodway (25-year floodplain) if any increase in flood levels during the base flood (100-year flood) discharge would result. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing relevant factors have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. The relevant factors to be considered are:

- 1) The danger to life and property due to flooding or erosion damage;
- 2) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- 3) The danger that materials may be swept onto other lands to the injury of others;
- 4) The compatibility of the proposed use with existing and anticipated development;
- 5) The safety of access to the property during times of flood for ordinary and emergency vehicles;
- 6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- 7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
- 8) The necessity to the facility of a waterfront location, where applicable;
- 9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 10) The relationship of the proposed use to the comprehensive plan for the area.

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 1605 HOUSTON STREET FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A RESIDENTIAL CONDOMINIUM IN THE 25 AND 100-YEAR FLOODPLAIN; AND PROVIDING AN EXPIRATION FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Council has considered the factors for granting a variance from floodplain regulations prescribed by Section 25-12-3 (*Local Amendments to the Building Code*), Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*) of the City Code. Council finds that the variance granted by this ordinance is the minimum necessary to afford relief, is based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 2. This ordinance applies to the construction of a residential condominium at 1605 Houston Street within the 25 and 100-year floodplain, subject to Site Plan Permit No. SP-04-0019C.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25 and 100-year floodplain prescribed by Section 25-7-92 (*Encroachment On Floodplain Prohibited*) of the City Code; and
- (B) the requirement to dedicate the 100-year floodplain easement prescribed by Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) of the City Code.

PART 4. The variance granted in this ordinance is effective only upon the satisfaction of the following conditions:

- (A) The applicant shall submit a complete application for Letter of Map Revision (LOMR) to the Federal Emergency Management Agency (FEMA)

prior to final acceptance of the proposed improvements.

- (B) The applicant shall complete all actions necessary to respond to any review comments by FEMA and to obtain final approval by FEMA of the LOMR application including but not limited to:
 - (1) Creation of a channel to convey flow through the site, fill to raise the proposed buildings above the 100-year floodplain, and on-site excavation within a privately-maintained, landscaped area to compensate for fill and loss of floodplain storage due to the construction.
 - (2) Decreased flood elevations on one other existing apartment complex and other single family lots immediately downstream of Houston Street. The floodplain will increase by 0.6 feet at one location immediately downstream of the site. The area of increased floodplain elevation will remain within the existing channel banks and will not impact any existing buildings or public rights-of-way.
- (C) The applicant shall obtain written permission for the channel modifications in a form approved by the City Attorney from each property owner adversely affected by an increase in floodplain elevations.
- (D) The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished structure, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.

PART 5. If the project for which this variance is granted does not receive all necessary building permits on or before February 28, 2006, this variance expires.

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 February 28, 2005.

PASSED AND APPROVED

_____, 2005

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk