

Item #40 — May 4, 2006

Russell Jones, the owner of the property and applicant, proposes to demolish an existing house and construct a new residence at 806 East 30th Street. The proposed house is the subject of Building Permit Number BP-04-9680R. The applicant's existing two-story house and the proposed replacement are in the 100-year and 25-year floodplains of Waller Creek. The existing house contains 929 sq. ft. of floor space. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 1628 sq. ft. single-family house (the proposed two-story structure includes 1260 sq. ft. of conditioned space, 160 sq. ft. of covered patio, a 160 sq. ft. balcony and 48 sq. ft. of covered porch). The 100-year floodplain inundates the entire lot. Most of the lot is also within the 25-year floodplain. The 100-year flood elevation in East 30th Street would be approximately 1.8 feet deep at the street curb line near the southeast property corner (the property corner most distant from Waller Creek). The 100-year floodplain elevation at the rear of the proposed house on the side nearest the creek would be approximately 4.25 feet deep.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT  
RECOMMENDS DENIAL OF THIS VARIANCE REQUEST.**

1. PROPOSED CONSTRUCTION IS WITHIN THE 25 AND 100-YEAR FLOODPLAINS OF WALLER CREEK. The proposed house plan is within the 25-year floodplain and the 100-year floodplain inundates the entire lot.
2. NO SAFE ACCESS. For the 100-year flood event, a water depth of 1.8 feet at the street curb line and a flow velocity range of 10.5 feet/second (rear of house nearest creek) to 2.5 feet/second impede access to the house. The house will be surrounded by 1.25 to 4.25 feet of water during the 100-year flood event.
4. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction increases the opportunity for human occupancy in the floodplain by demolishing an existing 929 sq. ft. house and constructing a 1628 sq. ft. house. The finished floor elevation of the proposed structure will exceed minimum City Building Code elevation requirements.
5. PREREQUISITES FOR GRANTING VARIANCE ARE NOT MET. The applicant's variance request must be the minimum necessary, considering the flood hazard, to afford relief. The applicant proposes to increase the opportunity for human occupancy in the floodplain by building a residence in the floodplain 175% the size of the existing structure. The minimum variance necessary would involve substantial improvement of the existing structure which sustained substantial damage through lack of upkeep.
6. RECENT FLOODS IN THE VICINITY. The November, 2004 storm events resulted in significant street and structure flooding along Waller Creek.
7. NONCONFORMING USE DISCONTINUED. The existing, nonconforming structure has not been lived in for 20 years. The applicant requests a variance to construct a nonconforming structure at a site where a nonconforming use has been discontinued for a period exceeding 90 days.

**VARIANCES REQUESTED FROM APPLICABLE CODE AND FINDINGS**

- I. Section 25-12-3, (Local Amendment to the Building Code), Appendix G, Section G102.3 (Nonconforming Uses) provides that a structure, or use of a structure or premises, which was lawful before the adoption of the Building Code floodplain regulations but does not conform to the floodplain regulations may be continued, subject to specific conditions, including:
  - (1) No such use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.

**VARIANCE REQUESTED:** *The applicant requests a variance to IBC Section G102.3 (1), to expand, enlarge, and alter the use of the property by demolishing an existing nonconforming*

*residence in the floodplain and constructing a larger nonconforming residence in the floodplain. The existing house contains 929 sq. ft. of floor space. The applicant wishes to construct a 1628 sq. ft. single-family house (the proposed two-story structure includes 1260 sq. ft. of conditioned space, 160 sq. ft. of covered patio, a 160 sq. ft. balcony and 48 sq. ft. of covered porch).*

- (3) If a nonconforming use is discontinued for a period of 90 days, any future use of the building or premises shall conform to these regulations.

**VARIANCE REQUESTED:** *The existing, nonconforming structure has not been lived in for almost 20 years (per the applicant's written statement). The applicant requests a variance to IBC Section G102.3 (3) to construct a nonconforming residence in the floodplain.*

- (4) Any nonconforming use or structure which is destroyed by means, including fire, to an extent of 50 percent or more of its market value, shall not be reconstructed except in conformance with the provisions of these regulations.

**VARIANCE REQUESTED:** *The value of the house has significantly declined due to lack of maintenance. TCAD 2005 lists the value of the lot at \$74,999 and the improvement (house) at \$1. Previous TCAD valuations show a total property value from \$131,645 (2004) to \$105,270 (2000). Land and improvement value is not listed separately for previous years, but it appears that the improvement value has declined significantly and in excess of 50% of its former value. The applicant requests a variance to IBC Section G102.3 (4) to construct a nonconforming residence in the floodplain which will be valued at an amount significantly greater than 50% of the value of the existing structure.*

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

**VARIANCE REQUESTED:** *The applicant requests a variance from LDC Section 25-7-92(A) to allow construction of the proposed house in the 25-year floodplain.*

- III. Section 25-12-3, (Local Amendment 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 construction of a single-family house without normal access by connection with an area that is a minimum of one foot above the design flood elevation. The proposed house will be surrounded by 1.25 to 4.25 feet of water during the 100-year flood event.*

- IV. 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 Section 25-7-152(A) to exclude the footprint of the proposed house from the requirement to dedicate a drainage easement.*

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

Per LDC Section 25-12-3, (Local Amendments to the Building Code), Appendix G, Section G105.7 (Conditions for Issuance), 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.*

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

## **FINDING**

1) **NOT MET.** The entire lot is in the 100-year floodplain and unique site size, configuration or topography characteristics have not been demonstrated.

2) **NOT MET.** Failure to grant the proposed variance will not necessarily render the lot undevelopable. The owner has the future option of requesting a floodplain variance as may be necessary to substantially improve the existing structure which has been substantially damaged through neglect. The existing house may be substantially improved (but not expanded, changed, enlarged or altered in a way which increases its nonconformity) to meet Building Code floodplain requirements with fewer floodplain variance requests than the applicant's current proposal. Floodplain variances should not be issued in this case for several reasons including the applicant's inability to demonstrate a hardship condition as defined by the Land Development Code and FEMA requirements.

3) **NOT MET.** The proposed development does not increase floodplain water-surface elevations. However, public safety risk is increased because 1.8 feet or more of water in front of the house inundate East 30th Street during the 100-year event and the proposed increase in floor space (from 929 to 1628 sq. ft.) offers significant opportunity for greater occupancy.

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.

4) **NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief. The existing structure is in poor condition but has not been condemned. The possibility of improving the existing structure or constructing a new residence not exceeding the size of the existing residence was discussed with the applicant as a means of minimizing the breadth of the variance requests. The applicant did not wish to pursue floodplain variance requests for the acquisition of a building permit for a structure no larger than the existing structure.

5) **CONDITION IS MET** because the proposed house floor elevation is above the required regulatory flood datum (100-year floodplain elevation plus one foot). The finished floor of the existing structure is below the 100-year floodplain elevation by about 0.80 feet. The finished floor of the proposed structure will be placed 2.25 feet above the 100-year floodplain elevation.