



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

AGENDA ITEM NO.: 104
AGENDA DATE: Thu 12/15/2005
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SUBJECT: Conduct a public hearing to consider variance requests by James Mansour to allow construction of an addition to a single-family residence at 208 W. North Loop Boulevard in the 25-year and 100-year floodplains of Waller Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain for the footprint of the residence.

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 Pantalion

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary M., 974-3374; George Oswald, 974-3369

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The Watershed Protection and Development Review Department recommends denial of this variance request.

Mr. James Mansour, the homeowner and applicant, proposes to enlarge his home at 208 West North Loop Boulevard. The proposed addition is the subject of Building Permit Number BP-05-7331RA. The applicant's residence is in the 100-year and 25-year floodplains of Waller Creek. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a two-story 896 sq. ft. addition (two stories at 16 ft. x 28 ft.) to the existing 728 sq. ft. single-family house. The proposed addition constitutes a substantial improvement as defined in the floodplain regulations. The 100-year floodplain of Waller Creek completely surrounds the existing house. The house is within the eastern edge of the 25-year floodplain. During a 100-year storm event water will be two feet deep on North Loop Boulevard at the front of the house restricting normal access.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-12-3 (Local Amendments to the Building Code), Appendix Chapter 58 (Flood Damage Prevention), Article 9 (Provisions for Flood Hazard Reduction), Section B (1) provides that a substantial improvement of a residential structure have the lowest floor elevated to or above the regulatory flood datum (RFD), which is one foot above the 100 year floodplain.



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The existing structure has a finished floor elevation of 1 foot 7 inches below the RFD.

VARIANCE REQUESTED: The applicant requests a variance to LDC Section 25-12-3, Appendix Chapter 58, Article 9 (B) 1 to allow a substantial improvement to the existing structure without requiring elevation of the existing structure.

- II. LDC Section 25-12-3 (Local Amendments to the Building Code), Appendix Chapter 59 (Floodplain Regulations), Section 5903 (Nonconforming Uses) provides that a structure which was lawful before the adoption of the 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.
- (2) No substantial improvement of the structure shall be made unless the structure is changed to conform with these regulations.

VARIANCE REQUESTED: The applicant requests a variance to LDC Section 25-12-3, Appendix Chapter 59, Section 5903 to expand and enlarge an existing, nonconforming residence in the floodplain and to construct a substantial improvement to the residence without conforming with floodplain regulations.

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

The proposed addition encroaches on the 25-year floodplain.

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

- 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.

The applicant's entire lot is within the 100-year floodplain of Waller Creek; therefore the entire lot is required to be dedicated under LDC Section 25-7-152.

VARIANCE REQUESTED: The applicant requests a variance to Section 25-7-152(A) to exclude the footprint of the residence 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 Chapter 58, Article 8, Administration, D, (Variance Procedures), variances shall only be issued upon an affirmative finding of the four conditions described below:

PREREQUISITE

FINDING

- | | |
|-----------------------------------------------------|-------------------------------------------------|
| 1) A determination that the variance is the minimum | 1) NOT MET. <i>Relief is defined as respite</i> |
|-----------------------------------------------------|-------------------------------------------------|



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necessary, considering the flood hazard, to afford relief.

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.*

In this case, there is no unnecessary hardship. The owner currently has use of the residential property in compliance with the Land Development Code.

2) Showing a good and sufficient cause.

2) NOT MET. *Cause has not been shown to grant the applicant multiple variances from floodplain management regulations that other property owners have been required to comply with. 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.*

3) A determination that failure to grant the variance would result in exceptional hardship to the applicant.

3) NOT MET. *The owner currently has economic use of the property. 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 and has not done so. FEMA advises*



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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.

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.

4) **NOT MET.** *The proposed development does not increase floodplain water surface elevations. However, public safety risk is increased because the structure is surrounded by up to 3 feet of water during the 100-year storm event and surrounded by up to 2.4 feet of water during the 25-year storm event. Additionally, the rate of rise of the upper Waller Creek is quick because of the small contributing area and the highly developed nature of the watershed. The proposed building addition will add 896 sq. ft. of interior space. The existing structure is 728 sq. ft. in floor area. The proposed increase in interior space offers significant opportunity for occupancy increase.*

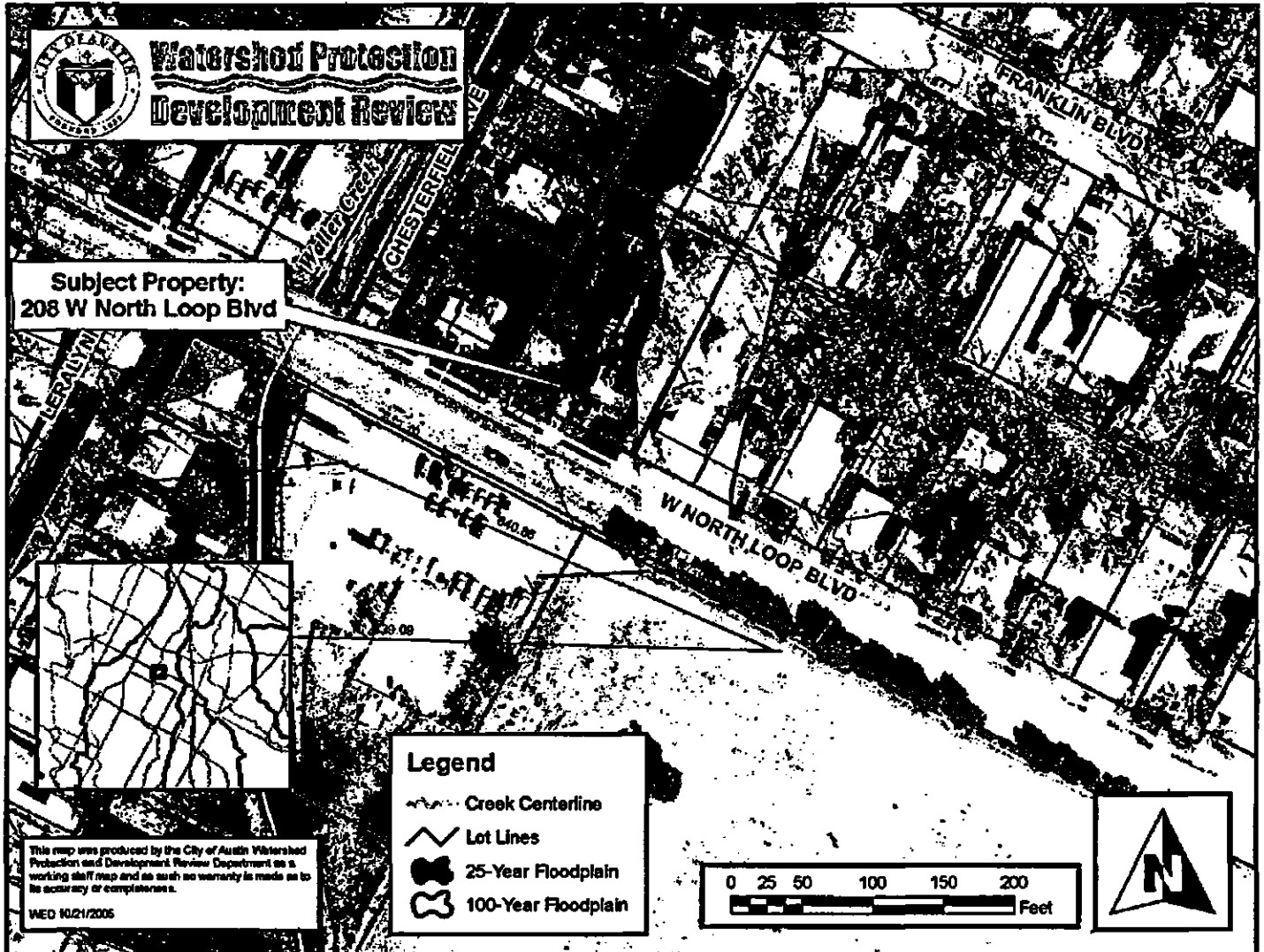
Backup Information Packet

Conduct a public hearing to consider a variance request to allow the construction of a room addition to the single-family house at 208 W. North Loop Boulevard to encroach into the 25-year and the 100-year floodplains of Waller Creek. And also to consider whether to waive the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.

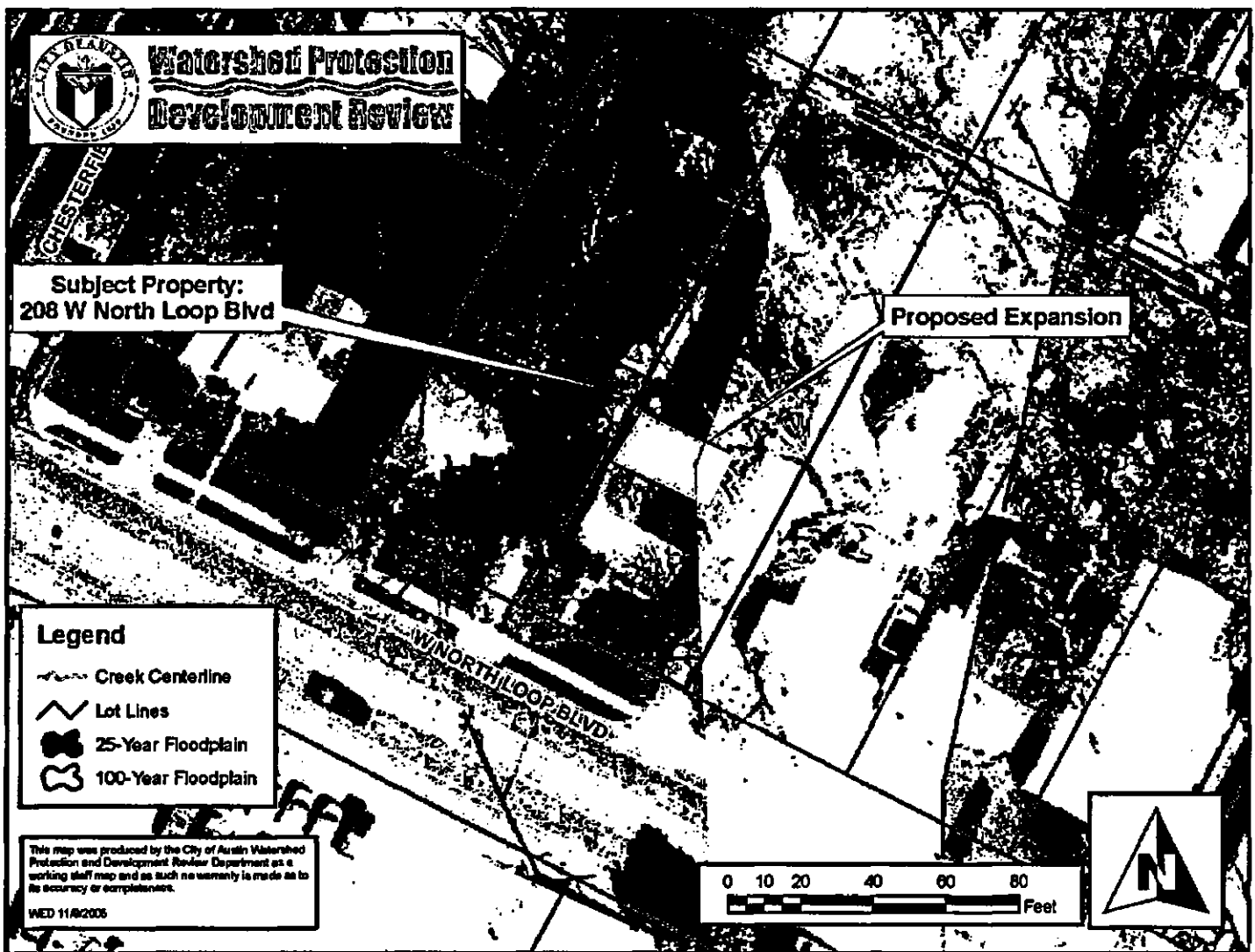
(Suggested date and time: December 15, 2005, at 6:00 p.m., City Hall Council Chambers, 301 West 2nd Street)

- **Site Location Map for 208 W. North Loop**
- **Location Map Showing Proposed Expansion**
- **Floodplain Variance Procedures.**

Location Map for 208 W. North Loop



Subject property at 208 North Loop Blvd. with proposed expansion



FLOODPLAIN VARIANCE PROCEDURES

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

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 judgement 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.

STAFF RECOMMENDS DENIAL

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 208 WEST NORTH LOOP BOULEVARD FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF AN ADDITION TO AN EXISTING HOUSE IN THE 25 AND 100-YEAR FLOODPLAIN, AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.

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

PART 1. This ordinance applies to the construction of a two-story addition to an existing single-family house located at 208 West North Loop Boulevard within the 25 and 100-year floodplain subject to Building Permit Application No. BP-05-7331RA.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*). 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, or extraordinary public expense, or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25-year floodplain prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the footprint of the residence from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (C) the prohibition against expanding, changing, enlarging, or altering a structure in a way which increases its nonconformity prescribed by City Code Section 25-12-3, Building Code Appendix Chapter 59, Section 5903 (*Nonconforming Uses*).

- (D) the requirement that the lowest floor of a residential structure be elevated one foot above the 100-year floodplain prescribed by City Code Section 25-12-3, Building Code Appendix Chapter 58, Article 9B(1) (*Provisions for Flood Hazard Reduction*).

PART 4. If the project for which this variance is granted does not receive all necessary building permits before December 15, 2006, this variance expires.

PART 5. 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 6. This ordinance takes effect on _____, 2005.

PASSED AND APPROVED

_____, 2005

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Will Wynn
Mayor

APPROVED:

David Allan Smith
City Attorney

ATTEST:

Shirley A. Brown
City Clerk