



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

**AGENDA ITEM NO.: 56
AGENDA DATE: Thu 01/12/2006
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SUBJECT: Conduct a public hearing to consider variance requests by Dan and Cristina Self to allow construction of an addition to a single-family residence at 4512 Avenue D in the 25-year and 100-year floodplains of Waller Creek and to limit the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain to exclude the footprints of the residence and garage apartment.

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, 974-3374;
George Oswald, 974-3371

PRIOR COUNCIL ACTION: December 15, 2005 - Set public hearing.

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

Daniel and Cristina Self, the homeowners and applicants, propose to enlarge their residence at 4512 Avenue D. The proposed addition is the subject of Building Permit Application number BP-05-9043A. The applicants' residence is in the 100-year and 25-year floodplains of Waller Creek. The applicants seek variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 950 sq. ft addition (two stories at approximately 24 ft. x 20 ft.) to the existing 985 sq. ft. single-family house. The 100-year floodplain of Waller Creek completely surrounds the existing house. The house is within the western edge of the 25-year floodplain.

The applicants state that they will elevate the existing house to bring the floor to an elevation of two feet above the 100-year floodplain. This would be 619.3 feet elevation (617.3' + 2'). The current house elevation is 616.7 feet or 2.6 feet below the 619.3 feet elevation.

There is a garage apartment structure located at the rear of the lot.

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

SUMMARY OF FINDINGS

1. PROPOSED CONSTRUCTION IS WITHIN THE 25 AND 100-YEAR FLOODPLAINS OF WALLER CREEK.



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2. **NO SAFE ACCESS.** For the 100-year flood event, a water depth of 2.5 feet on Avenue D in front of house and flow velocity of 0.50 feet/second impedes access to the property. Water depth surrounding the house is 1.3 to 2.4 feet deep.
3. **SUBSTANTIAL IMPROVEMENT PROPOSED.** This necessitates elevation of the existing structure floor elevation to the regulatory flood datum (100-year floodplain plus one foot). Applicant will raise elevation of the lowest floor of the existing structure two feet above the 100-year floodplain elevation.
4. **ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed construction increases the opportunity for human occupancy in the floodplain.
5. **HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST.** Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.
6. **RECENT FLOODS IN THE VICINITY.** The November 16 and 23, 2004 storm events resulted in severe house structure and roadway flooding in the upper Waller Creek watershed. House structure flooding was reported in the 4600 block of Avenue D.

VARIANCES REQUESTED FROM APPLICABLE CODE AND FINDINGS

- I. LDC Section 25-12-3, (Local Amendments to the Building Code), Appendix Chapter 59 (Floodplain Regulations) Section 5903 (Nonconforming Uses) provides that a structure, or the use of a structure or premises, which was lawful before the adoption of this chapter, but which does not conform to the floodplain regulations, may be continued subject to the specific conditions including:
 - A. (1) No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

***VARIANCE REQUESTED:** Because the structure is in the 25-year floodplain, it is "nonconforming" according to the National Flood Insurance Program regulations incorporated into the LDC. The applicant proposes enlarging the house and thereby increasing its nonconformity, providing additional opportunity for increased human occupancy in the floodplain. 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.*
- II. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year or 100-year floodplains.

***VARIANCE REQUESTED:** The applicants request a variance from LDC Section 25-7-92 (A) to allow construction of the addition in the 25-year floodplain.*
- III. LDC Section 25-7-152, (Dedication of Easements and Rights-of-Way) (A) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a



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drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicants request a variance to Section 25-7-152. (A) to exclude the footprints of the residence and the garage apartment from the requirement to dedicate a drainage easement.*

- IV. LDC Section 25-12-3, Technical Codes, Local Amendments to the Building Code, Appendix Chapter 59, Section 5912, Requirements for Other Flood-proofing Methods, (b), Building on Natural Terrain states that: "Normal Access to the building shall be by direct connection with areas above the RFD." The RFD is one foot above the 100-year floodplain.

VARIANCE REQUESTED: *The applicant's house will be surrounded by 1.3 to 2.4 feet of water during the 100-year flood event. The applicant requests a variance from the requirement of Appendix Chapter 59, Section 5912, (b) because normal access to the proposed building will not be by direct connect with areas above the RFD.*

PREREQUISITES FOR GRANTING VARIANCES AND STAFF FINDINGS:

Per LDC Section 25-12-3, Technical Codes, 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

STAFF FINDING

- 1) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- 1) NOT MET.

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

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.*

- 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*

Insufficient causes for issuing a variance



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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.

other property owners have been required to comply with.

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

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. FFMA 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.

- 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.

- 3) **NOT MET.** *The owner currently has economic use of the property. A variance should not be issued in this case for several reasons including the applicant's inability to demonstrate a hardship condition.*

- 4) **NOT MET.** *The proposed development does not increase floodplain water surface elevations. However, public safety risk is increased because of increased opportunity for human occupancy. The street in front of the house is inundated by up to 3 feet of water during the 100-year storm event and by up to 2.5 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 950 sq. ft. of interior space.*



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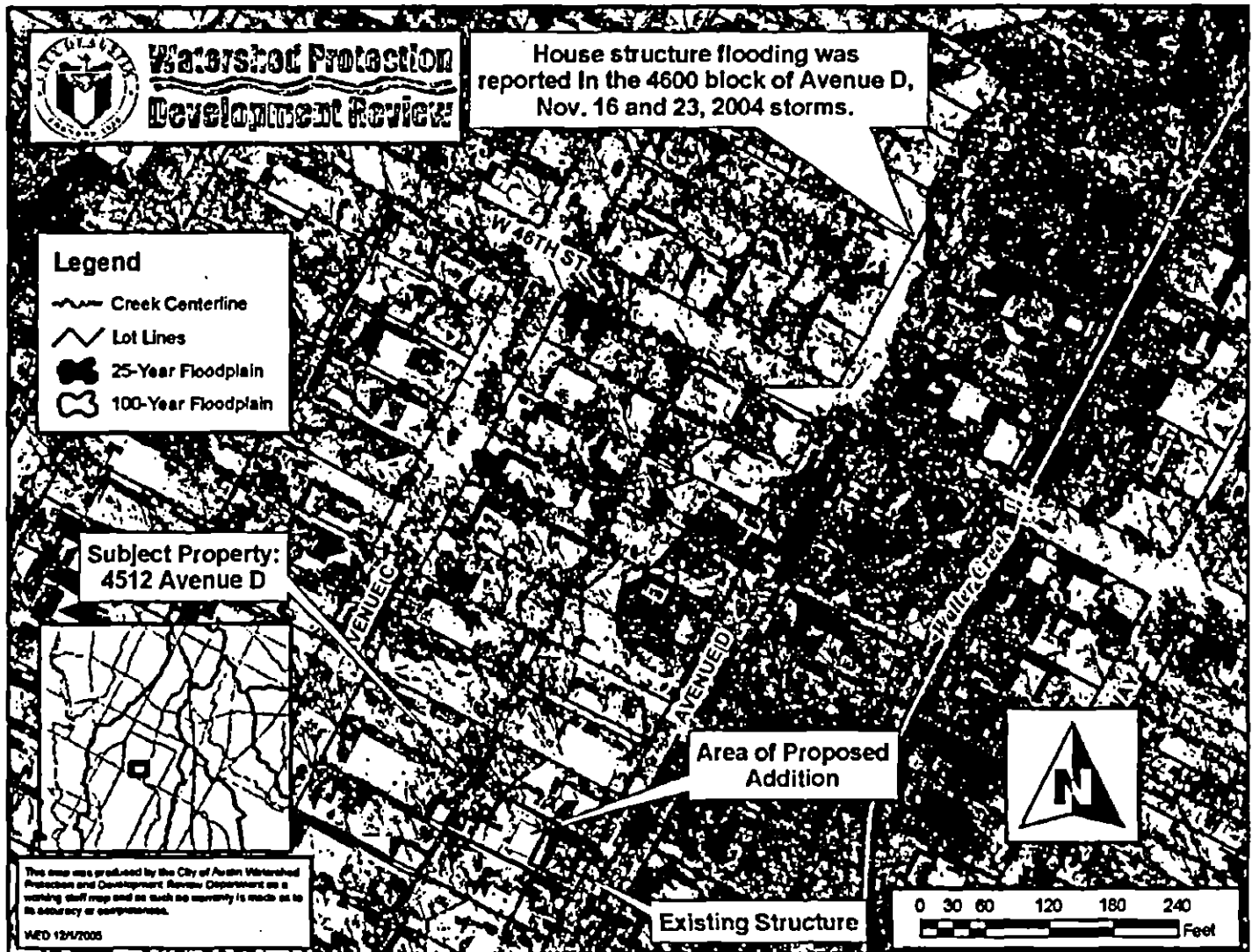
*The existing structure is 985 sq. ft. in floor area.
The proposed increase in interior space offers
significant opportunity for occupancy increase.*

Backup Information Packet

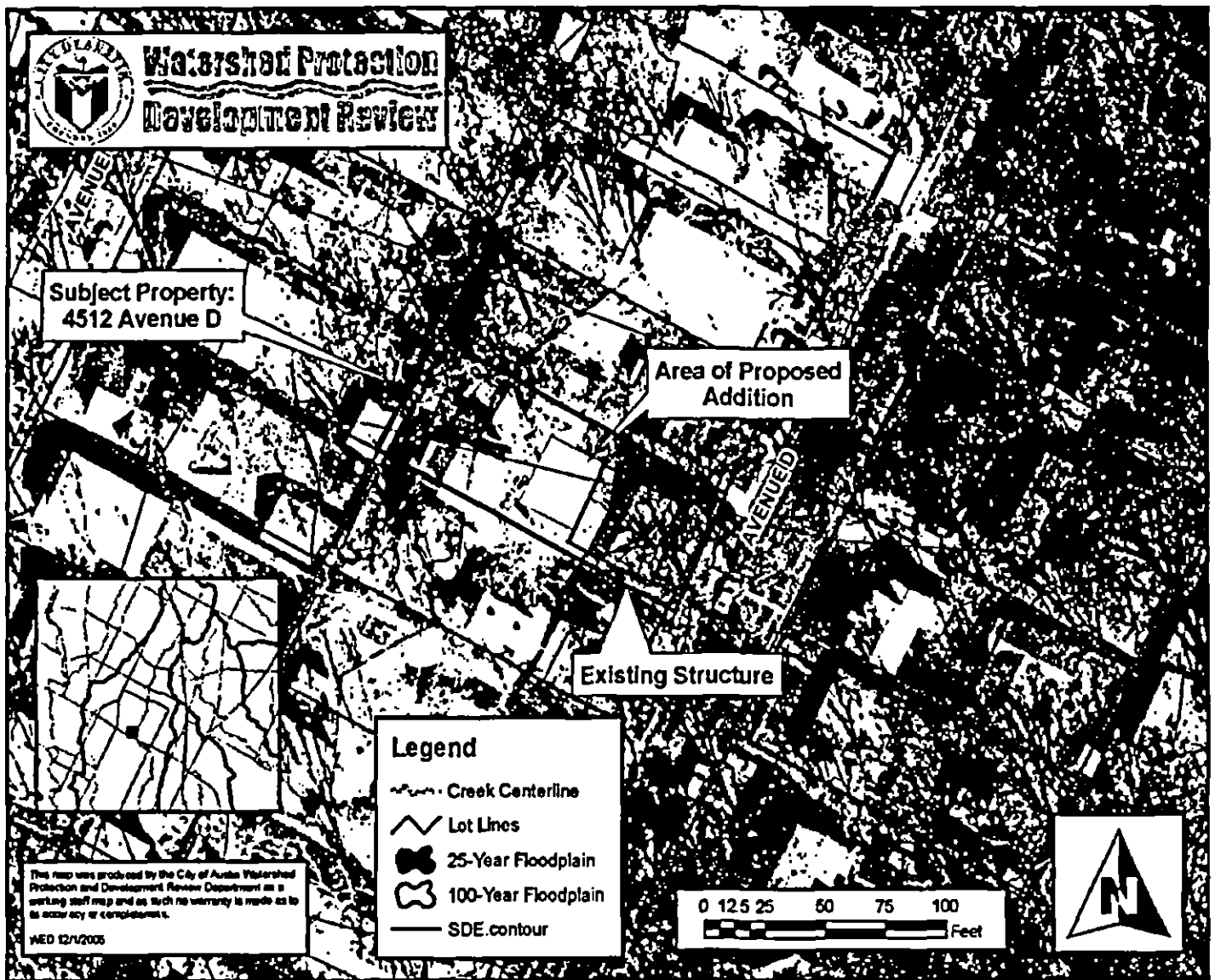
Conduct a public hearing to consider variance requests by Dan and Cristina Self to allow construction of an addition to a single-family residence at 4512 Avenue D in the 25-year and 100-year floodplains of Waller Creek and to limit the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain to exclude the footprints of the residence and garage apartment.

- Site Location Map with Floodplains for 4512 Avenue D
- Close Up of Site Location Map with Floodplains for 4512 Avenue D

Site Location Map with Floodplains for 4512 Avenue D



Close-Up of Site Location Map with Floodplains for 4512 Avenue D



ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 4512 AVENUE D FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR REMODELING AN EXISTING HOUSE AND CONSTRUCTION OF AN ADDITION 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 remodeling, and construction of a 950 square foot addition on an existing house at 4512 Avenue D within the 25 and 100-year floodplain, subject to Building Permit Application No. BP-05-9043A.

PART 3. A variance is granted from:

- (A) the requirement that normal access to a building be by direct connection with an area at least one foot above the design flood elevation prescribed by Section 25-12-3, Building Code Section 1612.4.3 (*Means of Egress*) of the City Code; and
- (B) the requirement that a structure may not be expanded, changed, enlarged, or altered in any way which increases its nonconformity prescribed in Section 25-12-3, Building Code Appendix G, Section G102.3 (*Nonconforming Uses*) of the City Code; and
- (C) the restriction on construction in the 25 and 100-year floodplains prescribed by Section 25-7-92(A) (*Encroachment On Floodplain Prohibited*) of the

City Code; and

- (D) the requirement that the lowest floor of a residential structure be elevated one foot above the design flood elevation prescribed by Section 25-12-3, Building Code Section 1612.4.2(3) of the City Code; and
- (E) Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) of the City Code to exclude the house, addition and existing garage apartment from the requirement to dedicate an easement to the limits of the 100-year floodplain.

PART 4. The variance granted in this ordinance is only effective if the applicant meets the following conditions:

- (1) The proposed building shall be supported on pier and beam foundation.
- (2) Flood conveyance area below the floor beams shall be maintained clear except for the piers.
- (3) The underside of the proposed floor joists shall have a minimum elevation equal to the 100-year floodplain elevation.
- (4) The finished floor of the existing structure and of the proposed building and all electrical and mechanical components susceptible to flood damage shall have a minimum elevation of two feet above the 100 year floodplain elevation.

PART 5. If the project for which this variance is granted does not receive all necessary building permits on or before January 23, 2007, 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 _____, 2006.

PASSED AND APPROVED

_____, 2006

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk