

A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, June 22, 2006

#125 PH

Back

Public Hearings and Possible Actions
RECOMMENDATION FOR COUNCIL ACTION

Subject: Conduct a public hearing to consider an expired floodplain variance requests by CitySmart Austin, Inc. to allow construction of a residential condominium at 1605 Houston Street in the 100-year and 25-year floodplains of the Hancock Branch of Shoal Creek.

Additional Backup Material

(click to open)

- ☐ [RCA text](#)
- ☐ [Draft ordinance](#)
- ☐ [Site location map - 1605 Houston](#)

For More Information: Ray Windsor, 974-3362; Gary M. Kosut, P.E., 974-3374; George E. Oswald, P.E., 974-3369

Prior Council Action: Council approved the same variance request on two previous occasions, July 18, 2002 (Ordinance No. 020718-81) and February 17, 2005 (Ordinance No. 020217-48).

The applicant, Loomis Austin, Inc., on behalf of the property owner, CitySmart Austin, Inc., has an approved Site Plan Permit (SP-04-0019C) for construction of a residential condominium at 1605 Houston Street. The site plan proposes a modification of the site topography to create a flood-flow bypass channel that will remove a significant portion of the 25-year and 100-year floodplains from the site, leaving additional 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.

The lot consists of approximately 1.63 acres near the Hancock Branch of Shoal Creek. Most of the lot is currently within the 25-year floodplain and the lot is almost completely within the 100-year floodplain. The applicant proposes thirty condominium units and floodplain modifications at the site. The site plan included a flood-flow bypass channel and excavation of a small pond that will, in conjunction with the channel, reduce the 100-year floodplain elevation in the project site area. The pond area will be small, park-like in appearance and privately maintained. The hydraulic models prepared by the applicant's engineer show an increase of 0.6 foot to the 100-year floodplain elevation at the downstream area of the site and to certain properties downstream. The applicant has obtained written permission from the affected downstream property owner to accept the higher 100-year floodplain elevation.

Council approved a substantially identical variance request for this proposed development on July 18, 2002. A condition of that variance approval was that this project must be permitted for construction on or before July 11, 2003. The applicant did not obtain all permits by that date and the variance expired. Again in 2005, Council approved the variance request with the condition that permits for construction be obtained no later than February 28, 2006. The applicant did not secure the required permits by that date and the variance granted in 2005 has expired. The variance must be approved again to allow construction to proceed.

The applicant proposes channel modifications that will reduce the existing floodplain elevation and horizontal extent on the site and on Houston Street. This will allow the proposed condominium buildings to be constructed two feet above the 100-year floodplain and the parking areas to be built in compliance with code floodplain management requirements. Access to the site from Houston Street will be within the 100-year floodplain; however the depth will be shallow, less than five inches. At project completion the FEMA floodplain map will be revised to indicate the floodplain reduction associated with this proposed project. This will reduce the flood hazard on several adjacent and downstream properties.

Proposed modifications of the site include:

- A bypass channel to convey flow through the site. The constructed channel will contain the 25-year floodplain,
- Fill on the site to raise the proposed buildings above the 100-year floodplain, and
- On-site excavation of a pond that will be small, park-like in appearance and privately maintained. The pond will compensate for the fill and subsequent loss of floodplain storage due to the construction.

Floodplain elevations will be decreased 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 owner of the affected property has accepted the floodplain changes.

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

1. **PROPOSED CONDOMINIUM CONSTRUCTION WILL BE OUTSIDE OF THE 25 AND 100 YEAR FLOODPLAINS OF HANCOCK BRANCH.** The proposed condominiums will be outside of the 25-year floodplain and the 100-year floodplain following the applicant's proposed channel, grading, and pond construction
2. **SAFE ACCESS.** Access to the site from Houston Street will be within the modified 100-year floodplain although the depth will be shallow, less than five inches.
3. **PREREQUISITES FOR GRANTING VARIANCE ARE SUBSTANTIALLY MET.** The applicant's variance request involves floodplain modification and meets three of the five prerequisites for granting a floodplain variance.

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 obtains written permission for the channel modifications from the property owner adversely affected by an increase in floodplain elevations in a form acceptable to the City Attorney. (Written permission has been obtained in a form acceptable to the City Attorney.)
4. The owner shall provide an Elevation Certificate certifying the finished floor elevation of the structures, signed by a Texas registered professional land surveyor before the City may issue a Certificate of Occupancy for the proposed structure.

VARIANCES REQUESTED FROM APPLICABLE CODE AND FINDINGS:

- I. 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 modification of the 25-year and 100-year floodplains such that the proposed structure and parking will not encroach into these floodplains.*

- II. Section 25-12-3, (Local Amendments 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 condominium buildings without normal access by connection with an area that is a minimum of one foot above the design flood elevation. Access to the site from Houston Street will be within the 100-year floodplain although that depth will be shallow, less than five inches.*

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 fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. 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

FINDING

1) **NOT MET.** Approximately half of the lot is in the 25-year and 100-year floodplains and unique site size, configuration or topography characteristics have not been demonstrated.

2) **CONDITION IS MET.** Failure to grant the proposed variance will render the lot undevelopable. With the current floodplain situation there is no safe access to the property in that 100-year floodwaters would be about one foot in depth. With the access issue and the 25-year and 100-year covering the front half of the lot, it is undevelopable.

3) **CONDITION IS MET.** The proposed development would increase floodplain water-surface elevations at one downstream property, but no buildings or roads would be affected by the increase. With the variance approved and the

existing laws 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.

project built, public safety risk is decreased because the 100-year floodplain level in Houston Street would decrease by approximately 1.0 foot.

4) **NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief. The property could be developed in a less dense manner and with less disruptive impact to the natural characteristics than this channelization and regrading project.

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.

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 FLOODPLAINS; AND PROVIDING AN EXPIRATION 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 residential condominium at 1605 Houston Street within the 25 and 100-year floodplains, subject to Site Plan Permit No. SP-04-0019C.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3 (*Local Amendments to the Building Code*), Appendix G, Section G105.7 (*Conditions for Issuance*). 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 3. A variance is granted from:

- (A) the restriction on construction in the 25 and 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*); and
- (B) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the condominium from the requirement to dedicate an easement to the limits of the 100-year floodplain; provided that the applicant dedicate an easement as required under Section 25-7-152 for that portion of the property on which the condominium does not lie.

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

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- (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.

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PART 5. If the project for which this variance is granted does not receive all necessary building permits on or before June 22, 2007, this variance expires.

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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.

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2 **PART 7.** This ordinance takes effect on _____, 2006.
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4 **PASSED AND APPROVED**
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8 _____, 2006
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Will Wynn
Mayor

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13 **APPROVED:**

David Allan Smith
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

Backup Information Packet

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

1. Site Location Map for 1605 Houston St.



Watershed Protection Development Review

1605 Houston St



This map was produced by the City of Austin Watershed Protection and Development Review Department as a working staff map and as such no warranty is made as to its accuracy or completeness.

WED 6-7-2006



Legend



Existing 100-Year Floodplain



Proposed 100-Year Floodplain