

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

Thursday, July 27, 2006

[Back](#) [Print](#)**Watershed Protection and Development
Review
RECOMMENDATION FOR COUNCIL ACTION****ITEM No. 83**

Subject: Consider floodplain variance requests by Mr. Enrique Parada in order to obtain a building permit to create a duplex structure from his single-family residence and an adjacent, recently placed structure at 1610 Houston Street, Austin, TX, in the 100-year floodplain of the Hancock Branch of Shoal Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain by deleting the footprint of the structures from the easement-dedication requirement.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

**Additional Backup
Material**

(click to open)

- ☐ [Ordinance](#)
- ☐ [Staff Report](#)
- ☐ [site location maps and
BOA action](#)

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

Boards and Commission Action: Board of Adjustment granted a request for a variance to decrease the minimum rear yard setback from 10 feet to 6.4 feet.

Prior Council Action: May 25, 2006, by Resolution No. 20060525-051

STAFF RECOMMENDS DENIAL

ORDINANCE NO.

1 **AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT**
2 **1610 HOUSTON STREET FROM CERTAIN FLOODPLAIN REGULATIONS**
3 **PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A DUPLEX IN**
4 **THE 100-YEAR FLOODPLAIN, AND PROVIDING AN EXPIRATION DATE**
5 **FOR THE VARIANCES.**

6
7 **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

8
9 **PART 1.** This ordinance applies to the placement of a second house and interconnecting
10 it with the existing house to create a duplex located at 1610 Houston Street within the
11 100-year floodplain subject to Building Permit Application No. BP-05-11385RM.

12 **PART 2.** Council has considered the factors for granting a variance from floodplain
13 regulations prescribed by City Code Section 25-12-3, Building Code Appendix G,
14 Section G105.7 (*Conditions for Issuance*). Council finds that the variance granted by this
15 ordinance is the minimum necessary to afford relief, is based on good and sufficient
16 cause, and failure to grant the variance would result in exceptional hardship. Council
17 further finds that the variance granted in this ordinance will not result in increased flood
18 heights, additional threats to public safety, or extraordinary public expense, or create a
19 nuisance, cause fraud on or victimization of the public, or conflict with existing local
20 laws or ordinances.

21 **PART 3.** A variance is granted from:

- 22 (A) the restriction on construction in the 100-year floodplain prescribed by City
23 Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- 24 (B) the easement requirements in City Code Section 25-7-152 (*Dedication of*
25 *Easements and Rights-of-Way*) to exclude the duplex from the requirement
26 to dedicate an easement to the limits of the 100-year floodplain; provided
27 that the applicant dedicates an easement as required by 25-7-152 for that
28 portion of the property for which a variance is not granted.
- 29 (C) the prohibition against expanding, changing, enlarging, or altering a
30 structure in a way which increases its nonconformity prescribed by City
31 Code Section 25-12-3, Building Code Appendix G, Section G102.3(1)
32 (*Nonconforming Uses*).

1 (E) the requirement that normal access to the building be by direct connection
2 with an area at least one foot above the design flood elevation prescribed by
3 City Code Section 25-12-3, Building Code Section 1612.4.3 (*Means of*
4 *Egress*).

5 **PART 4.** If the project for which this variance is granted does not receive all necessary
6 building permits before May 18, 2007, this variance expires.

7 **PART 5.** Approval of this variance does not constitute approval of zoning, subdivision,
8 a site plan, a building permit, or any other development permit; and it does not constitute
9 a commitment to any particular land use, intensity of land use, or utility services.
10 Approval of this variance does not constitute a guarantee of flood insurance availability,
11 rates, or requirements.

12 **PART 6.** This ordinance takes effect on _____, 2006.

13
14 **PASSED AND APPROVED**

15
16
17
18 _____, 2006

19 Will Wynn
20 Mayor

21
22
23 **APPROVED:**

24 David Allan Smith
25 City Attorney

26 **ATTEST:**

27 Shirley A. Gentry
28 City Clerk

Mr. Enrique Parada, the owner and applicant, has placed a second single-family house structure adjacent to his existing single-family house on a lot at 1610 Houston Street. The second house was placed without obtaining a building permit, but is now the subject of the Residential Building Permit Application Number BP-05-11385RM. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit for the second house and to create a duplex structure by interconnecting his existing residence and the recently placed house. The applicant's lot, including the existing residence and recently placed house, are completely within the 100-year floodplain of the Hancock Branch of Shoal Creek. The existing house is surrounded by 1.51 to 0.66 feet (18.1 to 7.9 inches) of water during the 100-year flood. The newly-placed house is surrounded by 1.04 to 0.86 feet (12.5 to 10.3 inches) of water during the 100-year flood; the depth of water at the adjacent roadway curb line is 1.81 feet.

NOTE: City Council conducted a Public Hearing on this variance request on May 18 and delayed taking action until the floodplain variance request for **1605 Houston Street** was considered. The variance request at **1605 Houston Street** involved the excavation of a small bypass channel that would, if constructed, reduce the floodplain elevations and remove **1610 Houston Street** from the 100-year floodplain. The proposed work is not a City funded drainage project. The **1605 Houston Street** project is a *private* condominium development. City Council approved the floodplain variance request for **1605 Houston Street** on June 22, 2006. The variance at **1605 Houston Street** has been approved twice previously by City Council and the applicant has allowed the variance to expire twice without constructing the proposed project. The applicant for the **1605 Houston Street** variance has indicated that the owners intend to sell the fully-permitted property in the fall of 2006; construction is anticipated to be completed by November 2007.

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

SUMMARY OF FINDINGS

1. **PROPOSED CONSTRUCTION IS IN THE 100-YEAR FLOODPLAIN OF THE HANCOCK BRANCH OF SHOAL CREEK.** The lot is outside of the 25-year floodplain but is entirely within the 100-year floodplain.
2. **NO SAFE ACCESS.** For the 100-year flood event the depth would be up to 1.0 feet at the door (1.81 feet at curb in front) of the recently-placed structure and both the existing and recently-placed buildings would be surrounded by floodwaters.
3. **ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed construction increases the opportunity for human occupancy in the floodplain.
4. **HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST.** Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.
5. **CODE EXCEPTION FOR FLOODPLAIN CONSTRUCTION DOES NOT APPLY.** The subject property does not meet exception requirements for single-family and duplex construction on lots platted before September 25, 1983.
6. There is no certainty that the proposed *private* project at 1605 Houston Street will be constructed to reduce the floodplain at 1610 Houston Street.

VARIANCES REQUESTED FROM APPLICABLE CODE

- I. Section 25-12-3, (*Local Amendment to the Building Code*), Appendix G, Section G102.3 (*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.

VARIANCE REQUESTED: The applicant requests a variance to IBC Section G102.3, 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 and 100-year floodplains.

VARIANCE REQUESTED: The applicant requests a variance from LDC Section 25-7-92(A) to allow placement of the single-family house to create a duplex in the 100-year floodplain.

- III. 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 100-year floodplain.

VARIANCE REQUESTED: The applicant requests a variance to Building Code Section 1612.4.3, to allow placement of a structure adjacent to an existing structure to form a duplex structure, without normal access by connection with an area that is a minimum of one foot above the design flood elevation.

- 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 connected structures from the requirement to dedicate a drainage easement.

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.*

FINDING

1) **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.*

- *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 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 local 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.*

2) **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.*

3) **NOT MET.** *The proposed development does not increase floodplain water-surface elevations. However, public safety risk would be increased by allowing the opportunity for more persons to occupy the floodplain. The yard would be inundated by up to 1.5 feet during the 100-year event.*

4) **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.*

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.

5) **CONDITION IS MET** *because existing floor elevations for both structures are above the required RFD.*

Backup Information Packet

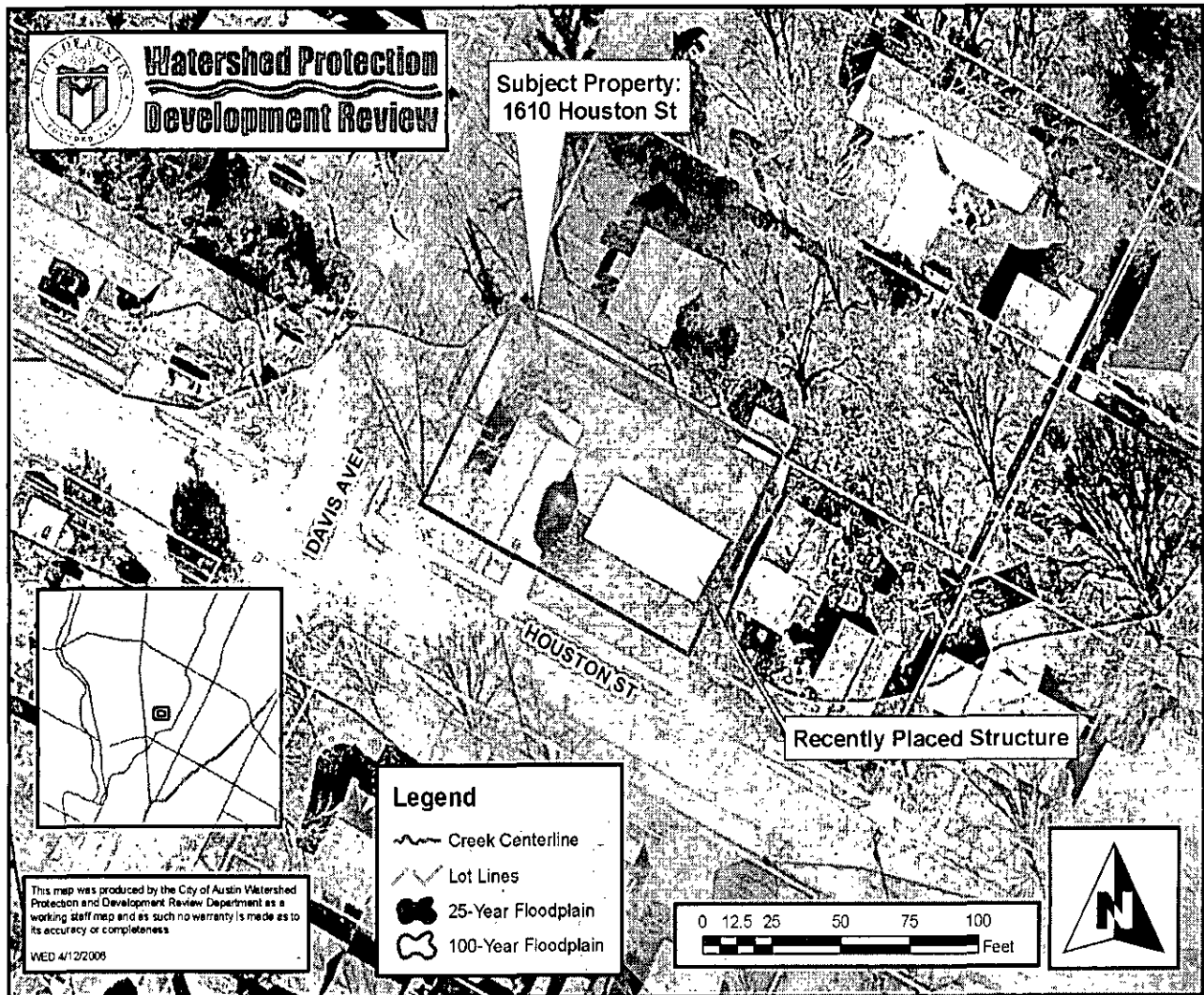
Conduct a public hearing to consider floodplain variance requests by Mr. Enrique Parada in order to obtain a building permit to create a duplex structure from his single-family residence and an adjacent, recently placed structure at 1610 Houston Street in the 100-year floodplain of the Hancock Branch of Shoal Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain by deleting the footprint of the structures from the easement-dedication requirement.

1. Site Location Map with Floodplains for 1610 Houston Street.
2. Close Up of Site Location Map with Floodplains for 1610 Houston Street.
3. Board of Adjustment Action.

Site Location Map with Floodplains for 1610 Houston Street



Close-Up of Site Location Map with Floodplain for 1610 Houston Street



**Board Of Adjustment (BOA)/Sign Review
Board (SRB)
November 14, 2005
City Council Chambers
301 W. 2nd Street**

CALL TO ORDER - 5:30 P.M.

**3. C15-05-136 Enrique Parada
1610 Houston**

The applicant has requested a variance to decrease the minimum rear yard setback requirement of Section 25-2-492(D) from 10 feet to 6.4 feet in order to move a house onto a lot and erect an addition to create a duplex residential use in an "SF-3-NP", Family Residence-Neighborhood Plan zoning district.

Granted 5-0