

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

AGENDA



Thursday, December 07, 2006

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Public Hearings and Possible Actions RECOMMENDATION FOR COUNCIL ACTION

ITEM No. 41

Subject: Conduct a public hearing to consider an ordinance for variance requests by Melinda Myers Simmen and Frank Simmen to allow construction of a single-family residence at 6704 Pixie Cove in the 100-year floodplain of Lake Austin and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain for the footprint of the proposed house and attached garage.

Additional Backup Material

(click to open)

- ☐ [backup](#)
- ☐ [site_location_map](#)
- ☐ [Ordinance](#)

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

Prior Council Action: 11/16/2006 - Council postponed public hearing to 12/07/2006

Melinda Myers Simmen and Frank Simmen, the applicants, propose to demolish an existing house and detached garage and construct a new residence with attached garage at 6704 Pixie Cove. The proposed construction is the subject of Building Permit Number BP-06-4938R. The applicant's existing two-story house, the detached garage and the proposed replacements are entirely within the 100-year floodplain of Lake Austin. The existing two-story house contains 1730 sq. ft. of air-conditioned floor space. The existing garage contains 400 sq. ft. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 4460 sq. ft. single-family house (the proposed two-story structure includes 4148 sq. ft. of conditioned space, 267 sq. ft. of covered porch, and a 45 sq. ft. balcony) with attached 573 sq. ft. garage. The 100-year floodplain inundates the entire lot. The rear of the lot faces Lake Austin.

The applicants propose to build a new house with a finished floor elevation 1.0 foot above the 100-year floodplain elevation. The finished floor of the existing house is 0.2 feet (2.4 in.) below the 100-year floodplain elevation. The depth of floodwaters from the 100-year flood event at the curb line in front of the house on Pixie Cove will be 2.20 ft. The depth of 100-year event floodwaters surrounding the proposed house will range up to 2.0 ft.

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

SUMMARY OF FINDINGS

1. PROPOSED CONSTRUCTION IS WITHIN THE 100-YEAR FLOODPLAIN OF LAKE AUSTIN. The 100-year floodplain inundates the entire lot.
2. NO SAFE ACCESS. For the 100-year flood event, a water depth of 2.2 feet at the street curb line in front of the house impedes access to the house. The house will be surrounded by 0.0 to 2.0 feet of water during the 100-year flood event.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction increases the opportunity for human occupancy in the floodplain by demolishing an existing 1730 sq. ft. house and constructing a 4460 sq. ft. house. The finished floor elevation of the proposed structure will exceed minimum City Building Code elevation requirements.
4. 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 250% the size of the existing structure. No economic hardship exists because the applicant property is developed.

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 two-story house contains 1730 sq. ft. of air-conditioned floor space. The existing garage contains 400 sq. ft. The applicant wishes to construct a 4460 sq. ft. single-family house (the proposed two-story structure includes 4148 sq. ft. of conditioned space, 267 sq. ft. of covered porch, and a 45 sq. ft. balcony) with attached 573 sq. ft. garage.*

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

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) to allow construction of the proposed house in the 100-year floodplain.*

- III. Section 25-12-3, 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 0.0 to 2.0 feet of water during the 100-year flood event. Depth of floodwaters in front of the house at the curb line will be 2.2 ft. deep.*

- 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.*

- V. LDC Section 25-7-2, Obstruction of Waterways Prohibited prohibits the placement of an obstruction in a waterway.

VARIANCE REQUESTED: *The applicant requests a variance to place a structure (an obstruction to flow of floodwaters) in a waterway.*

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. 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

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 does not render the lot undevelopable as the lot is developed. 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 2.20 feet of water in front of

nuisances, cause fraud on or victimization of the public or conflict with 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.

the house inundate Pixie Cove during the 100-year event and the proposed increase in floor space (from 1730 to 4460 sq. ft.) offers significant opportunity for greater occupancy.

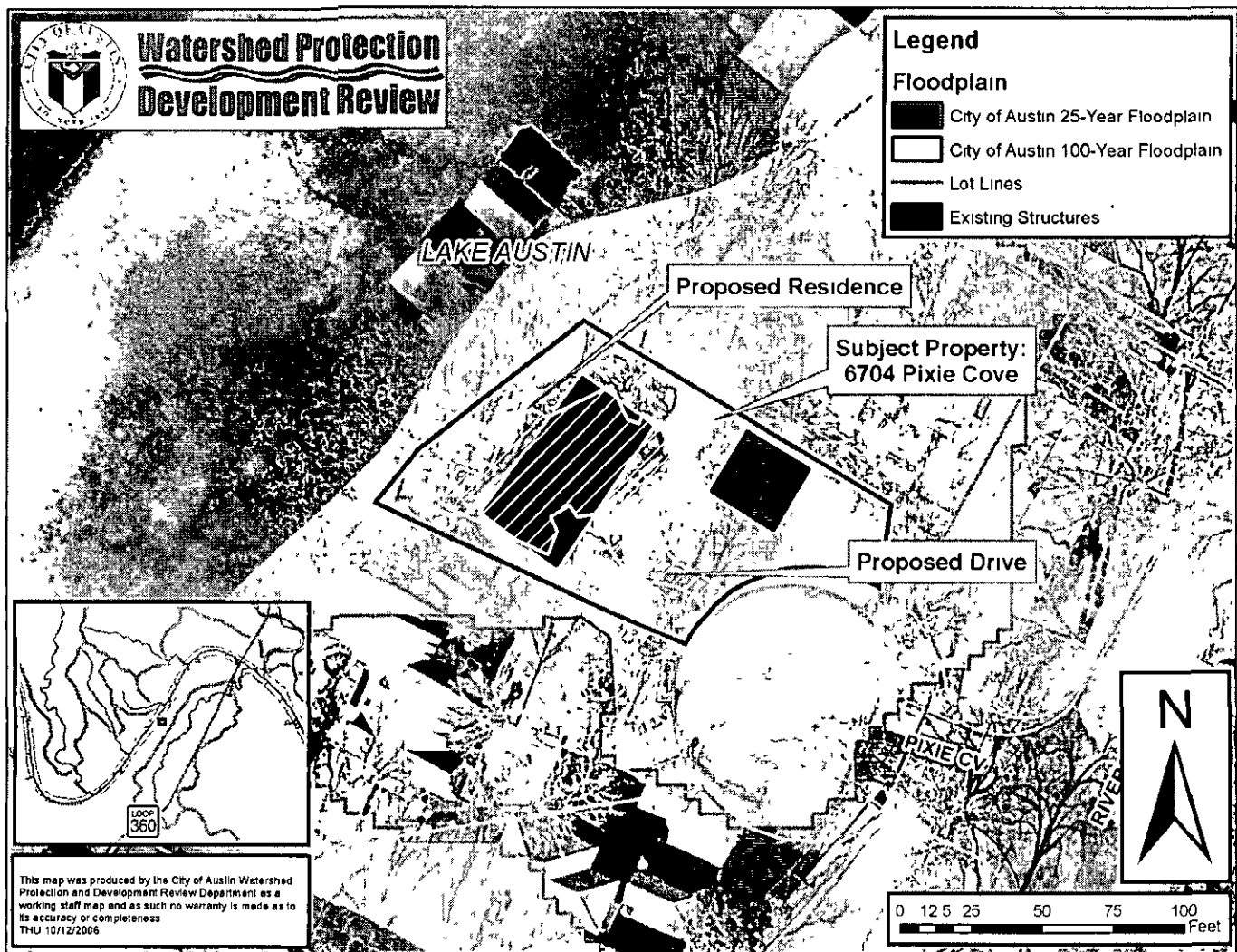
4) **NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief The existing structure is apparently in excellent condition and provides economic return. The possibility of improving the existing structure or constructing a new residence not exceeding the size of the existing residence are, for example, means of minimizing the breadth of the variance requests.

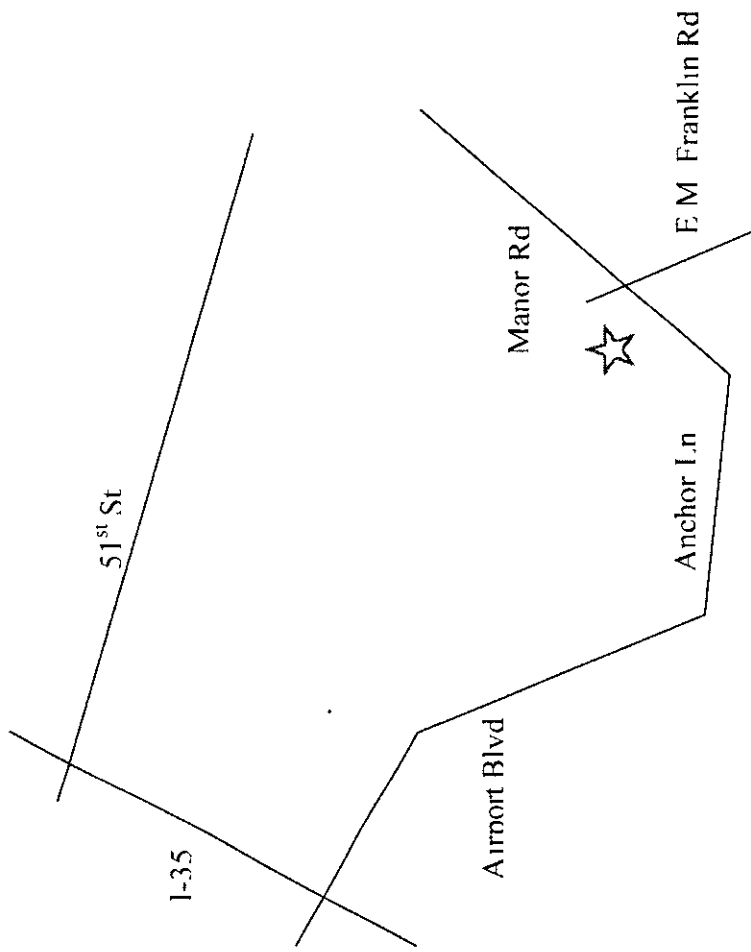
5.) **CONDITION IS MET** because the proposed house floor elevation is above the required regulatory flood datum (100-year floodplain elevation plus one foot). The finished floor of the existing structure is below the 100-year floodplain elevation by 0.20 feet (2.4 inches). The finished floor of the proposed structure will be placed 1.0 feet above the 100-year floodplain elevation.

Site Location Map with Floodplains for 6704 Pixie Cove



6704 Pixie Cove Floodplain Map





STAFF RECOMMENDS DENIAL

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 6704 PIXIE COVE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A SINGLE FAMILY RESIDENCE IN THE 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 construction of a 4,460 square foot new residence and 573 square foot attached garage at 6704 Pixie Cove within the 100-year floodplain subject to Building Permit Application No. BP-06-4938R.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, 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, 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 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the easement requirement in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the residence from the requirement to dedicate an easement to the limits of the 100-year floodplain; provided that the applicant dedicate an easement as required by 25-7-152 for that portion of the property for which a variance is not granted.
- (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 G, Section G102.3(1) (*Nonconforming Uses*).

1 (D) the prohibition against placing an obstruction in a waterway prescribed by
2 City Code Section 25-7-2 (*Obstruction of Waterways Prohibited*).

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

7 **PART 4.** If the project for which this variance is granted does not receive all necessary
8 building permits before November 16, 2007, this variance expires.

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

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

15
16 **PASSED AND APPROVED**

17
18
19
20 _____, 2006

21 Will Wynn
22 Mayor

23
24
25 **APPROVED:**

26 David Allan Smith
27 City Attorney

28 **ATTEST:**

29 Shirley A. Gentry
30 City Clerk