

**Recommendation for Council Action Backup
Floodplain Variance Request – 306 Heartwood Drive**

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The development covered by the building permit application is limited to a new exterior wall and finishing interior space to convert the garage into conditioned space. The development does not change the footprint of the house. Therefore, the development has no effect on the floodplain elevations.
2. THE DATE OF THE DEVELOPMENT IS UNKNOWN. Based on the City's research, this home was not in the 100-year floodplain when it was originally constructed in 1973. There is no record of the date of subsequent construction of the garage conversion because the owner did not obtain a building permit. Based on the applicant's information, when the current owner purchased the property in 1989, the garage was already converted into conditioned space.
3. FINISHED FLOOR BELOW MINIMUM REQUIRED ELEVATION. The existing house and the converted garage area have finished floor elevations that are below the City of Austin minimum elevation requirements (finished floor elevation must be at least one-foot above the 100-year floodplain elevation). The finished floor elevation of the house is approximately 6.9 feet below the 100-year floodplain and 3.9 feet below the 25-year floodplain.
4. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The development increases the opportunity for human occupancy in the floodplain by increasing the conditioned area of the residence. The development increases the conditioned living space within the 100-year floodplain by approximately 340 square feet.
5. NO SAFE ACCESS. The depth of water in Heartwood Drive adjacent to the property and at the existing house during the 25-year and 100-year flood event is 3.9 feet and 6.9 feet deep, respectively. First responder personnel do not have safe access to the house during a 100-year flood event.
6. FLOODING IN AREA. The flood data records for the October 1998 storm indicate several homes in this neighborhood were flooded.
7. COUNCIL DENIED VARIANCE ON OCTOBER 1, 2009.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits expanding, changing, enlarging, or altering a structure in a way which increases its nonconformity.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section G102.3 to allow the existing converted conditioned area to remain even though it enlarges the total conditioned living area that is below 100-year floodplain.*

- II. LDC 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 the existing converted conditioned area without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The entire lot is in the 25-year and 100-year floodplains. The depth of water at the curb line of 306 Heartwood Drive and surrounding the house during the 100-year flood event will be up to 6.9 feet deep.*

- III. LDC Section 25-12-243, (Local Amendments to the Building Code), Section R324.2.1 Elevation requirements requires buildings and structures to have the lowest floors elevated a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section R324.2.1 to allow the garage conversion to remain at its current elevation. The finished floor elevation will be approximately 6.9 feet below the 100-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 storm water flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant is requesting a variance to exclude the footprint of the existing house from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- V. LDC Section 25-1-218, (Restriction On Similar Applications) prohibits a person from filing an application for the same or similar variance for the same site for a period of one year from the date of the original denial.

VARIANCE REQUESTED: *The applicant is requesting a variance to allow this reapplication for the same floodplain variance request within the one year period that began October 1, 2009.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G105.7 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.*

FINDING

1) Based on conversations with the owner, this development may have occurred when the property was not located in the 100-year floodplain.

- *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 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.*

2) The property has been in use as a single-family residence for 37 years and the applicant has lived in the house for 21 years. Based on conversation with the owner, the development occurred prior to the current owner's purchase of the property.

3) The development does not result in increased flood heights. However, the development does increase public safety threat and increase public expense because more occupants could be allowed in harm's way.

4) Granting the floodplain variance does not avoid the need for other building permit requirements.

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) The City will deliver a letter to the applicant stating the extra risks of living in the floodplain.