

**ORDINANCE NO.**

**AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 2918 EAST MARTIN LUTHER KING JUNIOR BOULEVARD FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A BUILDING, PARKING AREA, AND RETAINING WALL IN THE 25 AND 100-YEAR FLOODPLAINS; ESTABLISHING CONDITIONS FOR THE VARIANCES; 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 the construction of a building, parking area, and retaining wall at 2918 East Martin Luther King Junior Boulevard within the 25 and 100-year floodplains as described in Site Plan Application No. SP-2009-0373C.SH(R1).

**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 G105.6 (*Considerations*) and G105.7 (*Conditions for Issuance*). Council finds that the variances granted by this ordinance are the minimum necessary to afford relief, are based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variances granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, 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 25 and 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*), to exclude the footprint of the proposed building from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (C) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5 (*Floodway Encroachment*) that development involving floodway encroachment not be approved unless a Professional Engineer demonstrates that the development will not cause any increase of the level of the design flood;

- (D) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G103.5.1 (*Floodway Revisions*) that no floodplain variance may be considered for a floodway encroachment increasing the level of the design flood until after the applicant has applied for a flood insurance rate map (“FIRM”) revision and has received approval of the revision from the Federal Emergency Management Agency (“FEMA”); and
- (E) the requirement in City Code Section 25-12-3, Building Code, Appendix G, Section G105.5 (*Restrictions*) that variances not be issued for development in the floodway if any increase in flood levels would result.

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

- (A) The applicant shall dedicate an easement to the City as required by City Code Section 25-7-152 to the limits of the 100 year floodplain, excluding the footprint of the building. The City may not issue a Certificate of Occupancy for the proposed building until the applicant submits all information and documentation necessary for the easement, and the easement as approved by the City Attorney is filed by the applicant in the Official Records of Travis County, Texas.
- (B) The applicant shall submit an Elevation Certificate to the City certifying the elevation of the finished floor of the building is a minimum of one (1) foot above the 100-year floodplain elevation and the elevation of machinery associated with this building is elevated a minimum of one (1) foot above the 100-year floodplain elevation, signed by a Texas registered professional land surveyor. The City may not issue a Certificate of Occupancy for the proposed building until the applicant has submitted a complete Elevation Certificate.
- (C) The applicant shall submit a certification by a Texas Registered Professional Engineer or Architect certifying that the building, parking area, and retaining wall will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Civil Engineers Manual 24 (*Flood Resistant Design and Construction*) before the City may approve the Site Plan for the placement of fill and retaining wall.

**PART 5.** This variance expires if the project for which this variance is granted does not receive a released Site Plan and Building Permit before \_\_\_\_\_, 2011.

**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 \_\_\_\_\_, 2010.

**PASSED AND APPROVED**

\_\_\_\_\_, 2010      §  
                                 §  
                                 § \_\_\_\_\_  
                                 Lee Leffingwell  
                                 Mayor

**APPROVED:** \_\_\_\_\_  
                         Karen Kennard  
                         Acting City Attorney

**ATTEST:** \_\_\_\_\_  
                         Shirley A. Gentry  
                         City Clerk