



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 50
AGENDA DATE: Thu 01/27/2005
PAGE: 1 of 2

SUBJECT: Set a public hearing to consider a request for a variance from the Land Development Code to allow the expansion and remodeling of an existing, structure located at 708 East 6th Street. and to waive the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain of Waller Creek. (Suggested date and time: February 3, 2005 at 6:00 p.m., City Hall Council Chambers.)

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT: Development Review **AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary Kosut, P.E., 974-3374;
Martha Vincent, 974-3371

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

The owner of the structure at 708 East 6th Street, Mr. Ron Flores, through his agent, Ms. Sarah Crocker, proposes to expand the existing, structure from 1380 square feet to 4096 square feet for use as a restaurant. The existing structure is entirely within the 25-year and 100-year floodplains of Waller Creek.

The Land Development Code 25-12-3, Section 5903, states that a structure that does not conform with the floodplain regulations shall not be expanded, changed, enlarged, or altered in a way which increases its nonconformity. Additionally, no substantial improvement of the structure shall be made unless the structure is changed to conform to the floodplain regulations.

APPLICABLE CODE:

LDC Section 25-12-3, Local amendments to the Building Code, Section 5903. Nonconforming Uses. A structure, or the use of a structure or premises, which was lawful before the adoption of this chapter, but which does not conform with the requirements of these regulations, may be continued subject to the following conditions:

- (1) No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.
- (2) No substantial improvement of the structure shall be made unless the structure is changed to conform with these regulations.

LDC 25-7-152 Dedication of Easements and Rights-of-Way.

- (A) The owner of real property proposed to be developed shall dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to



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**AGENDA ITEM NO.: 50
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PAGE: 2 of 2**

the limits of the 100-year floodplain.

PREREQUISITES FOR GRANTING VARIANCES:

Variances shall only be issued upon:

- 1) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 2) Showing a good and sufficient cause;
- 3) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- 4) A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

VARIANCE PROCEDURES:

The City Council shall hear and render judgment on requests for variances from the flood plain management regulations. Variances shall not be issued within any designated floodway (25-year floodplain) if any increase in flood levels during the base flood (100-year flood) discharge would result. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing relevant factors have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. The relevant factors to be considered are:

- 1) The danger to life and property due to flooding or erosion damage;
- 2) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- 3) The danger that materials may be swept onto other lands to the injury of others;
- 4) The compatibility of the proposed use with existing and anticipated development;
- 5) The safety of access to the property during times of flood for ordinary and emergency vehicles;
- 6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- 7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
- 8) The necessity to the facility of a waterfront location, where applicable;
- 9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 10) The relationship of the proposed use to the comprehensive plan for the area.