



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

**AGENDA ITEM NO.:** 34  
**AGENDA DATE:** Thu 02/10/2005  
**PAGE:** 1 of 3

**SUBJECT:** Conduct 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.

**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

**PURCHASING:** N/A

**MBE / WBE:** N/A

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The owner of the structure at 708 East 6th Street, Mr. Ron Flores, through his agent, Ms. Sarah Crocker, proposes to expand the existing, nonconforming 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 WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT  
RECOMMENDS DENIAL OF THIS VARIANCE REQUEST.**

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 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.



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- (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 the limits of the 100-year floodplain.

**DISCUSSION OF THIS VARIANCE REQUEST WITH RESPECT TO PREREQUISITES FOR GRANTING VARIANCES:**

The City Building Code Appendix Chapter 58, Article 8 specifies that variances shall only be issued upon: meeting the following prerequisites:

1. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

*Finding: Relief is defined as relief from exceptional hardship. In this case, there is no exceptional hardship. The owner currently has use of his property, in compliance with code, to operate a commercial enterprise within the existing building structure.*

2. Showing a good and sufficient cause;

*Finding: There is not cause to allow the owner a variance from code that other property owners have been required to comply with.*

3. A determination that failure to grant the variance would result in exceptional hardship to the applicant,

*Finding: The owner currently has economic use of the property. "Exceptional hardship" is defined as a characteristic of the land. It does not refer to personal or financial circumstances of the current owner of the land.*

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.

*Finding: The proposed development does not increase floodplain water surface elevations. However, public safety risk is increased because the structure is surrounded by up to 4.9 feet of water at the rear and 2.8 feet of water at the front for the 25-year storm event. Additionally, Waller Creek rate of rise is short because of the highly developed nature of the watershed. The proposed building addition would add 3041 square feet of interior space and 1055 square feet of open terrace or outdoor seating area. The existing structure is 2750 square feet if the "basement" is included; 1425 square feet without the basement. The proposed increase in interior space offers significant opportunity for occupancy increase and increased vulnerability to property damage.*

**VARIANCE PROCEDURES:**



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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.

## **Backup Information Packet**

Conduct a public hearing to consider a variance request to allow expansion and remodeling of an existing structure at 708 East 6<sup>th</sup> Street in the 25-year and 100-year floodplains 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.)

- Site Location Map for 708 East 6<sup>th</sup> Street.
- Floodplain Variance Procedures.
- Photograph of the existing building at 708 East 6<sup>th</sup> Street.
- Photograph of the existing building at 708 East 6<sup>th</sup> Street.
- Photograph of the existing building at 708 East 6<sup>th</sup> Street.

# Shed Protection Opment Review



## **2. FLOODPLAIN VARIANCE PROCEDURES**

Building Code, Appendix Chapter 58, Article 8 outlines procedures for consideration of flood plain development and evaluation of variance requests.

### **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 judgement 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.

Photograph of the existing building at  
708 East 6<sup>th</sup> Street



Photograph of the existing building at  
708 East 6<sup>th</sup> Street

