



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

AGENDA ITEM NO.: 69
AGENDA DATE: Thu 09/01/2005
PAGE: 1 of 4

SUBJECT: Conduct a public hearing to consider a variance request by Mitchell and Jan Davis to allow construction of a single-family house in the 25-year and 100-year floodplains of Boggy Creek at Clifford Avenue, at Lots 1, 2 and 3, Block A of the proposed Z-Lofts Subdivision located at the southeast corner of the intersection of Martin Luther King Jr. Boulevard and Clifford Avenue.

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 Pantalione

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary M. Kosut, P.E., 974-3374; Jacqueline Ramos, 974-3371

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION:

PURCHASING: N/A

MBE / WBE: N/A

The applicants/owners, Mitchell and Jan Davis, have submitted a subdivision plat application for the Z-Lofts Subdivision for subdivision of this tract into four single-family lots. The lots do not yet have addresses because the subdivision plat is not approved. Development of Lots 1, 2, and 3 encroach into the floodplain to some extent. Lot 4 does not require a variance. The tract is presently undeveloped and for the most part surrounded by a residential neighborhood. The edge of the Boggy Creek floodplain encroaches on the western portion of the tract.

Each of the three lots requires its own floodplain variance. This request is for Lots 1 through 3.

Lot 1 is at the southeast corner of the intersection of Martin Luther King Jr. Boulevard and Clifford Avenue. The proposed Lot 1 building area encroaches the 25-year floodplain approximately fifteen feet horizontally and the 100-year floodplain approximately thirty feet. The applicant's Engineer has demonstrated that the future structure (to be constructed on the Lot 1 building area) will not adversely affect the 100-year floodplain elevation or cause any additional flooding to this property or surrounding properties. The Davis' seek variances to encroach the 25-year floodplain and the 100-year floodplain with a future structure and also to only dedicate that portion of the 100-year floodplain area on Lot 1 that is outside of the perimeter of the proposed Lot 1 building area.

Lot 2 is the second lot from the southeast corner of Martin Luther King Jr. Boulevard and Clifford Avenue. The proposed Lot 2 building area encroaches on the 100-year floodplain approximately ten feet horizontally. The applicant's Engineer has demonstrated that the future structure (to be constructed on the Lot 2 building area) will not adversely affect the 100-year floodplain elevation or cause any additional



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flooding to this property or surrounding properties. The Davis' seek variances to encroach the 100-year floodplain with a future structure and also to only dedicate that portion of the 100-year floodplain area on Lot 2 that is outside of the perimeter of the proposed Lot 2 building area.

Lot 3 is the third lot from the southeast corner of Martin Luther King Jr. Boulevard and Clifford Avenue. The proposed Lot 3 building area encroaches on the 100-year floodplain approximately three feet horizontally. The applicant's Engineer has demonstrated that the future structure (to be constructed on the Lot 3 building area) will not adversely affect the 100-year floodplain elevation or cause any additional flooding to this property or surrounding properties. The Davis' seek variances to encroach the 100-year floodplain with a future structure and also to only dedicate that portion of the 100-year floodplain area on Lot 3 that is outside of the perimeter of the proposed Lot 3 building area.

The Davis' propose one single-family house per lot with driveway access to Clifford Avenue.

Emergency vehicle and personnel access during a flood event is a most important concern in the consideration of these variance requests. As a condition of approval of one or more of these variances, a 7.5 feet wide access easement along the rear property lines of all four lots must be dedicated to the public. This easement's purpose is for occupant self-evacuation and emergency responder access to all four houses during flood events, and the easement must remain clear of obstacles to pedestrian movement to and from Martin Luther King Jr. Boulevard. In addition, the applicant must agree to a plat note that will require future home builders to elevate the structure to the RFD (i.e., one foot above the 100-year floodplain elevation) or 533.4 feet elevation in this case.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS APPROVAL OF THIS VARIANCE REQUEST with the following conditions:**

- Dedication of a 7.5 feet wide drainage easement along the rear property lines of the lot.
- Dedication of a drainage easements to the perimeters of proposed Lot 1 building area, proposed Lot 2 building area, and proposed Lot 3 building area within the 100-year floodplain.
- A plat note requiring future home builders to elevate the structure to the RFD (i.e., one foot above the 100-year floodplain elevation) or 533.4 feet elevation for Lot 1, 532.8 feet elevation for Lot 2, and 532.4 for Lot 3.

APPLICABLE CODE AND ANALYSIS

LDC Section 25-7-92, Encroachments on Floodplain Prohibited specifies that a site plan may not be approved if a proposed building or parking area encroaches on the 25-year floodplain.

A future structure on Lot 1 would encroach up to approximately 15 feet horizontally into the 25-year floodplain at the front of the lot. Approximately 225 square feet of house would encroach the 25-year floodplain. WP&DR, after reviewing the applicant's engineering analysis and report, finds that (1) only a small portion of the Lot 1 building area is affected by the 25-year floodplain, (2) that no adverse impact would occur to this property or to any other properties or to the depth of flooding already in the public streets and (3) that the applicant will require that a future house be elevated to the RFD, which is one foot above the 100-year floodplain regulatory floodplain datum (Elev. 533.4 ft.).



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LDC Section 25-7-93, Encroachments on Floodplain Prohibited specifies that a site plan may not be approved if a proposed building or parking area encroaches on the 100-year floodplain.

WP&DR, after reviewing the applicant's engineering analysis and report, finds that (1) on Lot 1 a future structure would encroach the 100-year by about 30 feet horizontally resulting in approximately 1200 square feet of the future house encroaching the 100-year, (2) no adverse impact would occur, (3) that the applicant will require that a future house be elevated to the RFD, which is one foot above the 100-year floodplain regulatory floodplain datum (Elev. 533.4 ft.), and (4) there is emergency access to the lot from areas outside the floodplain along Martin Luther King Jr. Boulevard and along the rear property line;

finds that (1) on Lot 2 a future structure would encroach the 100-year by about 10 feet horizontally at the front of the lot resulting in approximately 300 square feet of the future house encroaching the 100-year, (2) no adverse impact would occur to this or other properties or to the depth of flooding in the public streets, (3) that the applicant, through a plat note, will require that a future house be elevated to the RFD, which is one foot above the 100-year floodplain regulatory floodplain datum (Elev. 532.8 ft.), and (4) there is emergency access to the lot from areas outside the floodplain along Martin Luther King Jr. Boulevard and along the rear property line;

and finds that (1) on Lot 3 a future structure would encroach the 100-year by about 3 feet horizontally at the front of the lot resulting in approximately 10 square feet of the future house encroaching the 100-year, (2) no adverse impact would occur to this or other properties or to the depth of flooding in the public streets, (3) that the applicant, through a plat note, will require that a future house be elevated to the RFD, which is one foot above the 100-year floodplain regulatory floodplain datum (Elev. 532.4 ft.), and (4) there is emergency access to the lot from areas outside the floodplain along Martin Luther King Jr. Boulevard and along the rear property line.

LDC Section 25-7-152, Dedication of Easements and Rights-of-Way (A) states that 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.

It is the WP&DR's recommendation that, without regard to the Department's other recommendations herein, the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain be reduced under this variance request with the condition that the property owners shall dedicate a drainage easement to the perimeters of proposed Lot 1 building area, proposed Lot 2 building area, and proposed Lot 3 building area within the 100-year floodplain, with the result that the structure not encroach the drainage easement. In addition, the applicant shall, as a condition of the granting of this variance request, grant a 7.5 feet wide easement across the rear of Lots 1, 2 and 3 for emergency access to this and the adjacent three lots.

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;



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- 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.

WP&DR ANALYSIS OF PREREQUISITES FOR GRANTING VARIANCES:

The applicant proposes the minimum necessary to afford relief at Lots 1, 2 and 3. In addition, the applicant showed a good and sufficient cause for granting the requested variance (the future viability of the building area of Lots 1, 2 and 3) and that the use of Lots 1, 2, and 3 would be very limited without the granting of the proposed variance. Finally, the applicant through their Engineer and with WP&DR concurrence has demonstrated that granting the proposed variance will 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.

TITCHELL DAVIS RCA
BACK-UP



ENVIRONMENTAL BOARD MOTION 060105-B2

Date: July 6, 2005

Subject: Z Lofts

Motioned By: Phil Moncada

Seconded By: Julie Jenkins

Recommendation

The Environmental Board recommends conditional approval of the variance request from the Land Development Code Section 25-8-261- to allow development in the CWQZ, with staff conditions, for the Z Lofts project.

Staff conditions:

1. The driveway shall not exceed 8' width on the property owner's side. This will restrict impervious cover more than joint use driveways;
2. Native vegetation will function as a vegetative filter strip for the runoff from the driveways; and
3. An IPM program will be implemented via a restrictive covenant.

Rationale

A memorandum was provided by Mr. Ray Windsor (WPDR) and modeling/floodplain study by Raymond Chan and Associates Inc. that stated there would be negligible impact on the existing or future conditions floodplain.

Continued on back

Vote 5-3-1-0

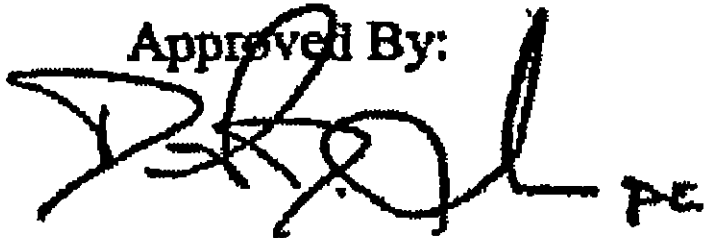
For: Curra, Holder, Jenkins, Maxwell, Moncada,

Against: Ahart, Ascot, Riley

Abstain: Anderson,

Absent: None

Approved By:

A handwritten signature in black ink, appearing to be "Dave Anderson", followed by the letters "PC" in a smaller, less stylized font.

Dave Anderson, Chair

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT LOTS 1, 2 AND 3, BLOCK A OF THE PROPOSED Z-LOFTS SUBDIVISION AT THE SOUTHEAST CORNER OF MARTIN LUTHER KING JR. BOULEVARD AND CLIFFORD AVENUE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF SINGLE-FAMILY RESIDENCES IN THE 25 AND 100-YEAR FLOODPLAINS, AND PROVIDING AN EXPIRATION FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. This ordinance applies to the construction of single-family residences at Lots 1, 2, and 3, Block A of the proposed Z-Lofts Subdivision, located at the southeast corner of Martin Luther King Jr. Boulevard and Clifford Avenue within the 100-year floodplain, subject to Subdivision Case File No. C8-05-0056.OA.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by Section 25-12-3 (*Local Amendments to the Building Code*), Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*) of the City Code. 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 variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, 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 floodplain prescribed by Section 25-7-92 (*Encroachment On Floodplain Prohibited*) of the City Code; and
- (B) Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the residences from the requirement to dedicate an easement to the limits of the 100-year floodplain; and

PART 4. The variances granted in this ordinance are effective only upon the satisfaction of the following conditions:

- (A) The applicant shall include in the plat for the proposed Z Lofts Subdivision, file no. C8-05-0056.OA, 7.5 feet wide access easements along the rear property lines of Lots 1, 2, 3 and 4 to allow evacuation by occupants and emergency responder access.
- (B) The applicant shall include in the plat for the proposed Z Lofts Subdivision, file no. C8-05-0056.OA, a plat note requiring the finished floor elevation of any structure built on Lots 1, 2 or 3 be at least one foot above the 100 year floodplain.
- (C) The applicant shall provide restrictive covenants in a form approved by the City Attorney, requiring that any structure built on Lots 1, 2 and 3 have a finished floor elevation of at least one foot above the 100 year floodplain.

PART 5. If the final plat for the proposed Z Lofts Subdivision is not approved and filed of record in the official records of Travis County, on or before October 20, 2006, this variance expires.

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 _____, 2005.

PASSED AND APPROVED

_____, 2005

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§
§

Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

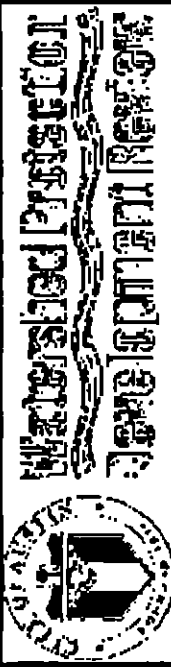
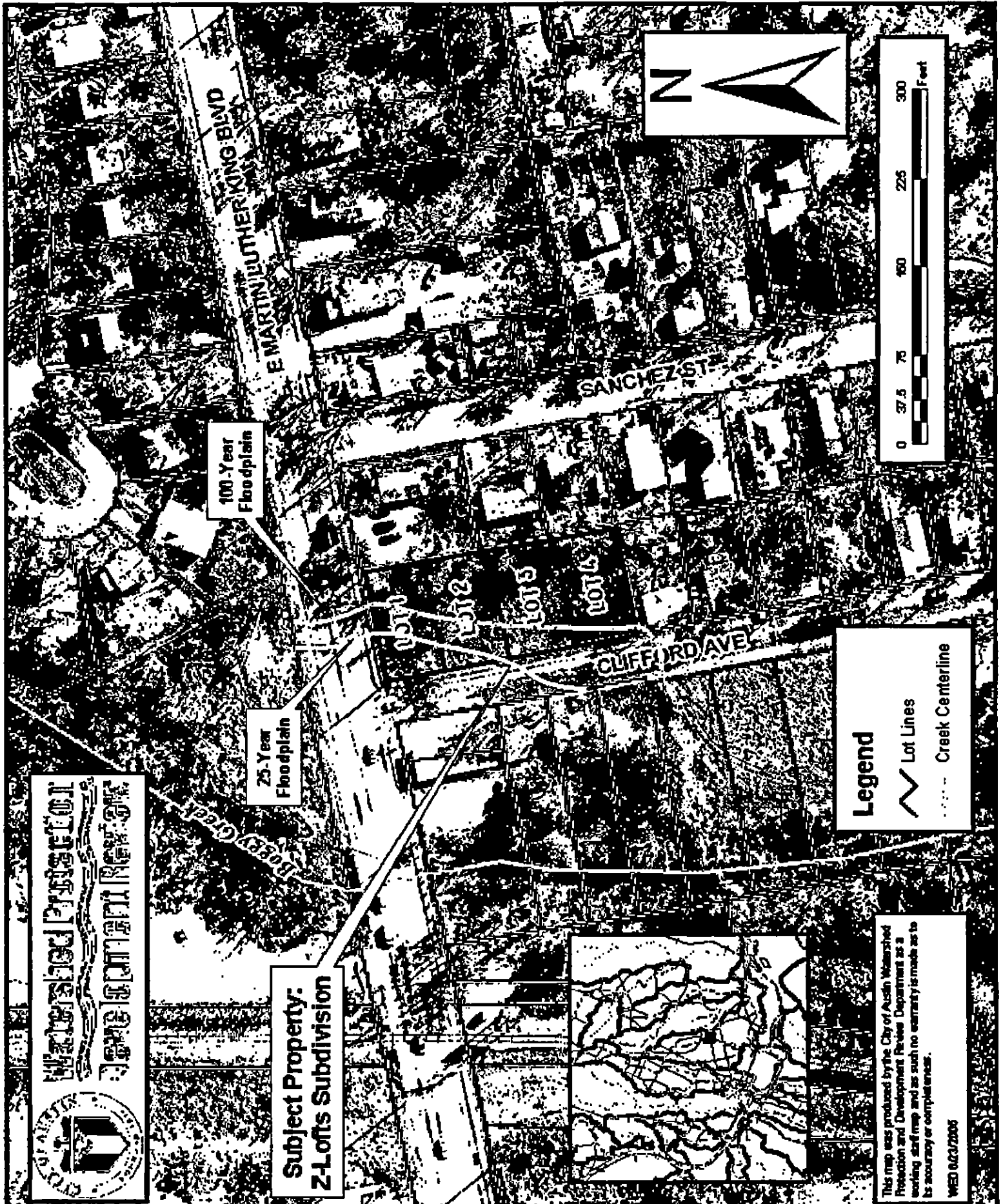
ATTEST: _____
Shirley A. Brown
City Clerk

Backup Information Packet

Conduct a public hearing to consider a variance request to allow the construction of a single-family house at Clifford Avenue, lot 1, Z-Lofts Subdivision, to encroach into the 25-year and 100-year floodplains of Boggy Creek. And also to consider whether to waive the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.
(Suggested date and time: August 4, 2005, at 6:00 p.m.)

- Site Location Map for Z-Lofts Subdivision
- Floodplain Variance Procedures.
- Photograph of the existing tract at Z-Lofts Subdivision, 2919 MLK Jr. Boulevard
- Photograph of the existing tract at 2919 MLK Jr. Boulevard

Location Map for Z-Lofts Subdivision, 2515 Martin Luther King Jr.
Boulevard



Subject Property:
Z-Lofts Subdivision

This map was produced by the City of Austin Watershed Protection and Development Review Department as a working staff map and as such no warranty is made as to its accuracy or completeness.

WED 06/27/2006

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 existing tract at Z-Lofts Subdivision, 2919 MLK Jr.
Boulevard



Photograph of existing tract at Z-Lofts Subdivision, 2919 MLK Jr.
Boulevard

