



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

AGENDA ITEM NO.: 37
AGENDA DATE: Thu 11/03/2005
PAGE: 1 of 3

SUBJECT: Conduct a public hearing to consider a variance request by Janet Maykus to allow construction of an addition to a single-family residence at 403 West 55 1/2 Street in the 25-year and 100-year floodplains of Waller Creek and to waive requirement to dedicate a drainage easement to the full limit of the 100-year floodplain.

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 M. Kosut, P.E., 974-3374; Joan Esquivel, 974-3371

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The applicant, Janet Maykus, through her representative, David Stark of Precision Designers, Inc., proposes to construct an addition (400 sq. ft., 14' x 28.5') to her existing single-family house at 403 West 55 1/2 Street. The existing house is in the 25-year floodplain of Waller Creek and is completely surrounded by the 100-year floodplain. The depth of the 100-year floodplain is approximately 2 feet deep in West 55 1/2 Street at the front of the house.

The Watershed Protection and Development Review Department recommends denial of this variance request.

The Land Development Code prohibits construction of a building in the 25-year floodplain (LDC 25-7-92 (a)). The fact that the existing house is in the 25-year floodplain means that the house structure is considered "nonconforming" with respect to our FEMA National Flood Insurance Program (NFIP) regulations, which are within our LDC.

The house is also surrounded by the 100-year floodplain of Waller Creek. The LDC 25-7-93, General Exceptions, allows a single-family house to be built in the 100-year floodplain if the subdivision was recorded before September 25, 1983. In this case the plat was recorded in 1948. But in order for the house to conform to the exception the house must be elevated to the Regulatory Flood Datum (RFD) defined as 12 inches higher than the 100-year flood elevation. In this case, the house elevation is 19 inches lower than the RFD. Therefore, the house is also "nonconforming" with respect to the 100-year floodplain elevation.



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The building permit application proposes an addition of 400 square feet, of which a bedroom would be 252 square feet and an adjacent deck, 148 square feet. In the case that the variance request is approved, the owner would have to build the room addition and deck to the required elevation or RFD of 453.1 feet elevation. In the case that the variance request is not approved, the house may remain as is, but may not be expanded, changed, enlarged, or altered.

The applicant's residence does not have "normal access...by direct connection with an area above the regulatory flood datum (100-year floodplain elevation plus one foot)". As a result, this variance request may only be granted by approval of the City Council. The floodwaters surrounding this house and the floodwaters in West 55 ½ Street will be approximately 2 feet deep in the 100-year storm event, preventing safe access to and from the house by EMS and AFD.

APPLICABLE CODE AND ANALYSIS

LDC 25-12-3, Technical Codes, Local Amendments to the Building Code, Appendix Chapter 59, Floodplain Regulations, Section 5903, Nonconforming Uses specifies that 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.

Because this house structure is in the 25-year floodplain, it is considered as "nonconforming" according to the NFIP regulations in the LDC. This variance request is for an addition to the house that would enlarge the house and thusly increase its nonconformity. Theoretically, anytime a structure is enlarged, that is, more floor area is added, then the structure is capable of placing more occupants in harm's way when a flood does occur.

The existing house is also "nonconforming" with respect to the floor elevation and the 100-year floodplain. The floor level is 1.6 feet, or around 1 foot-7 inches lower than the RFD.

LDC 25-12-3, Technical Codes, Local Amendments to the Building Code, Appendix Chapter 58, Flood Damage Prevention, Article 8, Administration, C. Permit Procedures, (2) Approval or denial of a site plan by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

- e. The safety of access to the property in times of flood for ordinary and emergency vehicles

The house will be surrounded by significant depths of water during the 100-year storm event, and access to and from the site by public-safety responders during the 100-year flood event will be prevented by the flood waters. In the 100-year event the water in West 55 ½ Street will be approximately 2 feet deep at the front of the house.

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.



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It is the Watershed Protection And Development Review Department'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 perimeter of the lot area within the 100-year floodplain, with the result that the structure not encroach on the drainage easement.

ANALYSIS OF PREREQUISITES FOR GRANTING VARIANCES:

The applicant would have continued use of the structure and property in the case of denial of the variance request. Thusly, no exceptional hardship would exist. In the case of approval of the variance request, the increase in the occupant capacity of the structure would increase the threat to public safety and public expense of emergency responder personnel.

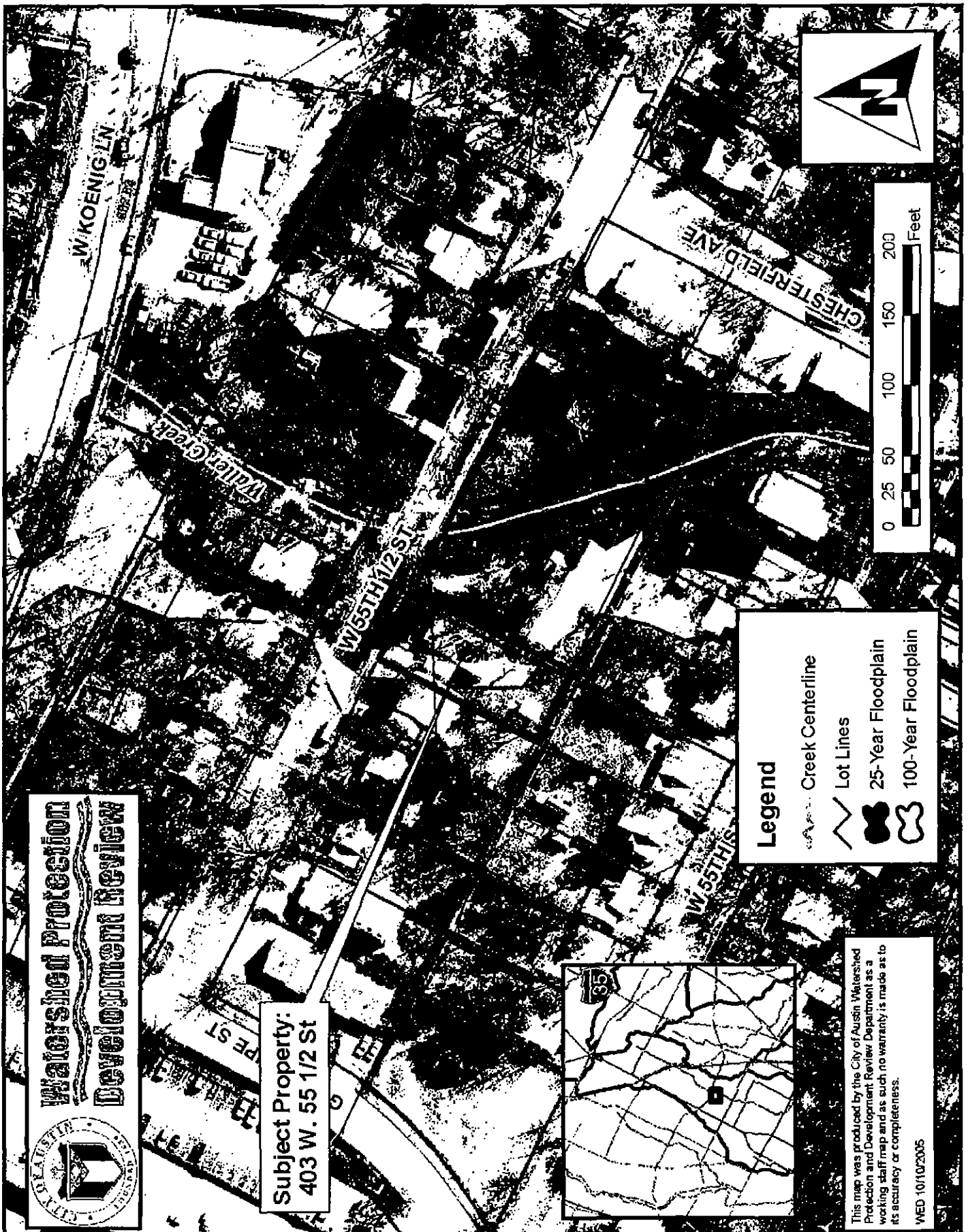
Backup Information Packet

Conduct a public hearing to consider a variance request to allow the construction of a room addition and deck addition to the single-family house at 403 W. 55 ½ Street to encroach into the 25-year and the 100-year floodplains of Waller 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: November 3, 2005, at 6:00 p.m.)

- Site Location Map for 403 W. 55 ½ St.
- Floodplain Variance Procedures.
- Photograph of the existing Maykus house at 403 W. 55 ½ St.
- Photograph of the existing Maykus house at 403 W. 55 ½ St.

Location Map for 403 West 55 1/2 Street



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 Maykus house at 403 W. 55 ½ Street



Photograph of the existing Maykus house at 403 W. 55 ½ St.



STAFF RECOMMENDS DENIAL

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 403 WEST 55 ½ STREET FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF AN ADDITION TO AN EXISTING HOUSE IN THE 25 AND 100-YEAR FLOODPLAIN, 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 the addition of a bedroom and an adjacent deck to an existing house located at 403 West 55 ½ Street within the 25 and 100-year floodplain subject to Building Permit Application No. BP-05-7130RA.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*). Council finds that the variance granted by this ordinance is the minimum necessary to afford relief, is 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, or extraordinary public expense, or 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 floodplain prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the house, addition, and deck from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (C) the requirement that the lowest floor of a residential structure be elevated one foot above the 100-year floodplain prescribed by City Code Section 25-12-3, Building Code Appendix Chapter 58, Article 9B(1) (*Provisions for Flood Hazard Reduction*); and
- (D) the prohibition against expanding, changing, enlarging, or altering a

structure in a way which increases its nonconformity prescribed by City Code Section 25-12-3, Building Code Appendix Chapter 59, Section 5903 (*Nonconforming Uses*).

PART 4. If the project for which this variance is granted does not receive all necessary building permits before November 3, 2006, this variance expires.

PART 5. 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 6. 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