



MEMORANDUM

TO: Mayor and Council

THROUGH: Robert Goode, P.E., Assistant City Manager

FROM: Jorge M. Morales, P.E., CFM, Director
Watershed Protection Department

DATE: July 15, 2024

SUBJECT: Item # 109 and the Floodplain Variance Process

A public hearing to consider a request for floodplain variances for a proposed development at 506 West Avenue is on the July 18, 2024, Council agenda (Item #109). The purpose of this memo is to provide information Council may find helpful in hearing and making a decision regarding this and future floodplain variance requests.

Staff Recommendation

Staff reviewed the requested floodplain variances and found that the conditions described in City Code Section 25-12-54 (F)(7) are not met. In summary, the lot is located entirely within the 25-year and 100-year floodplains, and the development does not meet three of the five prerequisites for granting variances. Most importantly, the proposed development does NOT provide safe access for the occupants and first responders. **Therefore, staff recommends Council deny all three floodplain variances.** The detailed evaluation is included in the backup for this item: [“Agenda backup: Floodplain Variance Request”](#).

The Floodplain Variance Process

The City’s floodplain regulations are found in Chapter 25-7 (*Drainage*) of the City Code and Chapter 25-12, Article 3 of the Technical Codes. When an applicant proposes development in a floodplain, staff in the Watershed Protection Department review the site plan application to determine whether it complies with the City’s floodplain regulations. Staff reviews proposed development, which may include new buildings, parking areas, additions to buildings, interior remodeling, or grading (moving dirt) within the 100 year and 25 year floodplain(s). If the developer wants a variance from the floodplain regulations, the applicant can submit a request for a variance. City Code authorizes the Watershed Protection Department to grant an administrative variance to floodplain regulations under certain limited circumstances and provides for certain exceptions to the regulations. If the proposed development does not qualify for an administrative variance or exception, the Federal Emergency Management Agency (**FEMA**) requires that the governing body of the community hear and decide the floodplain variance request.

After conducting and closing a public hearing on the request for a floodplain variance, Council deliberates, makes findings, and acts. To grant a floodplain variance, City Code Section 25-12-54(F)(7) requires Council to find that certain conditions for issuance have been met. In reviewing the requests for these variances, As part of Council's deliberation, the Council considers the technical evaluations, relevant factors, and the enumerated factors set out in City Code Section 25-12-54 (F)(6). If Council decides to approve the variance(s), it does so by ordinance.

Floodplain Regulations in Austin

From large dam failures along the Colorado River in the early 1900s to the 1981 Shoal Creek floods, and 2013 and 2015 Onion Creek floods, catastrophic flooding has resulted in loss of life and damaged millions of dollars in private property and public infrastructure. In response to this and after initiating local drainage rules in 1974, the City began participating in **FEMA's** National Flood Insurance Program (**NFIP**) in September 1981.

FEMA requires communities participating in the NFIP to adopt and enforce a minimum set of floodplain regulations known as the *minimum standards*. Similar to many communities in the country, Austin's floodplain regulations go above and beyond the minimum standards in order to reduce flood damages in our community.

Participation in the NFIP benefits Austin residents because it gives residents the option to purchase flood insurance from the federal government at a reduced rate compared to private flood insurance. The average annual flood insurance premium in Austin is \$670. There are approximately 8,000 flood insurance policies currently in force in Austin covering \$1.95 billion of buildings and contents. Participation in the NFIP also qualifies Austin for federal disaster money through presidentially declared disasters and other grant funding through the State of Texas.

In 1990, FEMA introduced the Community Rating System (**CRS**) as a voluntary program for recognizing and encouraging community floodplain management activities exceeding the minimum standards. Austin has participated in the CRS program since 1991. CRS evaluates activities such as flood warning, floodplain mapping, higher regulatory standards, outreach programs and the preservation of open space and natural features. Recently, Austin was upgraded in the CRS program to a Class 5 resulting in Austin residents receiving up to a 25% discount on flood insurance premiums. This equates to a savings of approximately \$904,000 in annual insurance premiums.

Implications of Floodplain Variance Decisions

The life and safety consequences to the public and first responders make the floodplain variance decision a weighty one. In addition, the City's participation in the NFIP and CRS are dependent on the enforcement of the minimum standards and higher standards, respectively. Our participation in these programs could be in jeopardy if variances are granted without justification. If FEMA were to find the granting of variances from the minimum standards unjustified, it has the authority to place the City on probation until the issues with the program are rectified, with the possibility of suspension from the NFIP. Similar to FEMA's findings, the CRS program reviews our participation in the program annually. If this review were to find the granting of variances from our higher standards unjustified, we may lose CRS credit that we receive by having these higher standards. This could increase the insurance premiums that Austin residents pay.

Whether looking far into our City's past or searching our recent memory for scenes of flood-related devastation, the importance of flood safety in Austin cannot be overstated. The floodplain regulations

adopted by the City are intended to protect the public; to qualify the City and the public for benefits under a federal program; and to build a safer more resilient community.

Item #109; July 18, 2024 Council Agenda: Requested variances to Land Development Code for development application SP-2023-0437C at 506 West Avenue

The applicant submitted site plan application number SP-2023-0437C to construct a multi-family residential building located at 506 West Avenue. The applicant **is requesting three floodplain variances** before City staff can approve the site plan as currently proposed.

In reviewing the requests for these variances, City Code requires Council to consider all technical evaluations, all relevant factors, and the applicable technical codes, including the following enumerated factors as detailed in City Code Section 25-12-54 (F)(6):

- (a) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (b) The danger to life and property due to flooding or erosion damage.
- (c) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (d) The importance of the services provided by the proposed development to the community.
- (e) The availability of alternate locations for the proposed development that are not subject to flooding or erosion.
- (f) The compatibility of the proposed development with existing and anticipated development.
- (g) The relationship of the proposed development to the comprehensive plan and flood plain management program for that area.
- (h) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (i) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (j) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

As stated above, staff reviewed the requested floodplain variances and found that the conditions described in City Code Section 25-12-54 (F)(7) are not met. Therefore, **staff recommends Council deny all three floodplain variances**. However, a draft ordinance that grants the variances is posted to backup should Council find that the required conditions are met.

A summary of finding is included below. The detailed evaluation is included in the backup for this item: [“Agenda backup: Floodplain Variance Request”](#).

SUMMARY OF FINDINGS:

1. **THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY.** The applicant’s engineer certified that the proposed development does not result in additional adverse flooding impact on other properties.
2. **NO SAFE ACCESS.** The proposed development’s access point to the right-of-way is located in the 25-year and 100-year floodplains. The depth of water during a 100-year flood event at West Avenue is approximately 9 feet. **First responder personnel and**

building occupants do not have safe access to and from the building during a 25-year or 100-year flood event.

3. **HARDSHIP CONDITIONS FOR THE PROPERTY DO EXIST.** The lot is located entirely in the 25-year and 100-year floodplains. The means of egress regulation presents a hardship since safe access for the property cannot be achieved to a public right-of-way. However, this hardship existed prior to the current owner purchasing the property.

Should you have any questions, please contact Kevin Shunk, P.E., CFM, Floodplain Administrator, at (512) 974-9176 or Kevin.Shunk@austintexas.gov.

Cc: T.C. Broadnax, City Manager
Robert Goode, P.E., Assistant City Manager