

**Recommendation for Council Action – Backup
Floodplain Variance Request – 1120 Denfield St.**

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADDITIONAL FLOODING ON OTHER PROPERTY. The applicant’s engineer certified that the converted accessory structure does not result in additional adverse flooding on other properties.
2. NO SAFE ACCESS. The converted accessory structure’s access to the right-of-way is located in the 100-year floodplain. The depth of water during a 100-year flood event is 1 foot in the right-of-way and for the entire property. First responder personnel and building occupants do not have safe access to and from the building during a 100-year flood event.
3. THE CONVERTED BUILDING’S FINISHED FLOOR ELEVATION IS AT THE MINIMUM REQUIRED ELEVATION. The finished floor of a building is required to be a minimum of 3 feet above the highest adjacent grade on the property. The finished floor elevation of the converted accessory structure is 3 feet above the 100-year floodplain.
4. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. The applicant sought and was granted a permit for new development on the property to replace the previous single-family residence with a new single-family home and accessory structure (studio).

APPLICABLE CODE AND VARIANCES REQUESTED

- I. Land Development Code Section 25-12-53 (Flood Loads) (C)(4)(a) Means of Egress normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

***VARIANCE REQUESTED:** The applicant requests a variance to Technical Code Section 25-12-53 (C)(4)(a), to allow a residential building to be constructed without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The depth of the 100-year floodplain on the property is 1 foot.*

- II. LDC Section 25-7-92 (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building or parking area on the 25-year and 100-year floodplains.

***VARIANCE REQUESTED:** The applicant requests a variance to allow placement of a second Dwelling Unit within the City of Austin’s 100-year floodplain of Tannehill Creek.*

- III. LDC Section 25-7-152 Dedication of Easements and Rights-of-Way requires that the owner of real property proposed to be developed 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.

VARIANCE REQUESTED: *The applicant requests a variance to eliminate the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain. The applicant proposes to dedicate a drainage easement to the full extent of the floodplain less the proposed converted building and primary single-family dwelling.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-54, Technical Codes, F.7 Conditions for issuance, variances shall only be issued upon consideration of the following prerequisites:

PREREQUISITE

- 1) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration, or topography of the site.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

- 2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact, financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or

FINDING

- 1) **CONDITION IS NOT MET.** The applicant has not shown good and sufficient cause to allow the conversion of the accessory structure into a dwelling unit. The floodplain regulations allow the previous single-family building to be demolished and replaced with one dwelling unit. The regulations would also allow an accessory structure within the floodplain. However, the regulations do not allow two dwelling units to be approved administratively.

- 2) **CONDITION IS NOT MET.** There is not a hardship due to the accessory structure (studio) being approved and constructed. The applicant later converted the studio to a dwelling unit after being explicitly told during the permitting process that a second dwelling unit on the property did not comply with the floodplain regulations.

the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.

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

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

3) **CONDITION IS PARTIALLY MET.**

The development does not increase flood heights. The development does increase the public safety threat because the new dwelling is in the floodplain without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** The applicant proposed and was granted a permit to construct single-family dwelling on the property. Granting a variance to allow a second dwelling on the property is not the minimum relief necessary and denial of the variance does not render the property valueless. The applicant has already demonstrated an ability to develop the property in compliance with the regulations via their approved building permit for a single-family dwelling and accessory structure (studio).

5) **CONDITION IS MET.** The finished floor elevation of the converted accessory structure is 3 feet above the highest adjacent grade.