

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 5506 Windward Drive**

**SUMMARY OF FINDINGS:**

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The development covered by the building permit application is limited to interior alterations to convert the garage into conditioned space. The development does not change the footprint of the house. Therefore, the development has no effect on the floodplain elevations.
2. FINISHED FLOOR BELOW MINIMUM REQUIRED ELEVATION. The existing house and the garage have finished floor elevations that are below the City of Austin minimum elevation requirements, which require the finished floor elevation to be at least one-foot above the 100-year floodplain elevation. The finished floor elevation of the garage is approximately 0.5 feet below the 100-year floodplain.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The development increases the opportunity for human occupancy in the floodplain by increasing the conditioned area of the residence. The development increases the conditioned living space within the 100-year floodplain by approximately 210 square feet.
4. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. There is an existing house on the lot that is occupied. Failure to convert the garage into conditioned space would not impact the single-family use of the lot. The property does not have a hardship as defined in the Building Code.
5. NO SAFE ACCESS. The depth of water in Windward Drive adjacent to the property is 2.4 and 3.3 feet deep during the 25-year and 100-year storm events, respectively. At the existing house during the 25-year and 100-year flood event the water is 0.6 feet and 1.5 feet deep, respectively. First responder personnel do not have safe access to the house during a 100-year flood event.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Building Code Section G102.3 to allow enlarging the total conditioned area of the building that is below the 100-year floodplain elevation.*

- II. LDC Section 25-12-3, (Local Amendments to the Building Code), Section R324.2.1 Elevation requirements requires buildings and structures to have the lowest floors elevated a minimum of one foot above the design flood elevation.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Building Code Section R324.2.1 to allow converting the garage to conditioned area without elevating the lowest floor a minimum of one foot above the 100-year floodplain. The existing floor elevation of the garage is approximately 0.5 feet below the 100-year floodplain.*

- 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 is requesting a variance to exclude the footprint of the existing house from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-12-3, (Local Amendments to the Building Code), Section 1612.4.3 Means of Egress provides that 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 Building Code Section 1612.4.3, to allow converting the garage to conditioned area without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The entire lot is in the 25-year and 100-year floodplains. The floodplain depths at the curb line of 5506 Windward Drive are approximately 3.3 feet during the 100-year flood event and 2.4 feet during the 25-year flood event.*

## **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

### **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*

### **FINDING**

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies converting the garage to conditioned space where the finished floor elevation is below the 100-year floodplain and there is no safe access out of the floodplain.

2) **CONDITION IS NOT MET.** The single-family dwelling currently on this lot has been in use since 1961. If the garage is not converted into conditioned space, the house would remain in its existing condition. Failure to grant this variance would not render the lot undevelopable.

*fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or 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 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 NOT MET.** The proposed development does not increase flood heights. The development does increase public safety threat because more occupants could be located in the house without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** The property currently provides a reasonable use as a residence with an attached garage.

5) **CONDITION IS MET.** The applicant has been informed of the hazards of living in the floodplain and the potential increased flood insurance premiums. The City will deliver a letter to the applicant stating the extra risks of living in the floodplain.