

**Recommendation for Council Action – Backup
Floodplain Variance Request – Fairmont Hotel**

SUMMARY OF FINDINGS:

1. THE PROPOSED RETAINING WALL WILL CAUSE ADVERSE FLOODING IMPACT TO OTHER PROPERTY. The retaining wall will cause increases in flood depths of up to 0.08 feet (0.96 inches) in 25-year water surface elevations and 0.15 feet (1.8 inches) in the 100-year water surface elevations within the project area and extending approximately 1,900 feet upstream. These increases in flood depths will affect City-owned property in addition to private property.
2. FINISHED FLOOR ELEVATIONS BELOW MINIMUM REQUIRED ELEVATION. The proposed building will have finished floor elevations below the City of Austin minimum elevation requirements, which require the finished floor elevation in the central business area to be at least two-feet above the 100-year floodplain elevation. Two of the more than twenty entrances for the proposed building do not comply with the two-foot freeboard requirement. These non-compliant finished floor elevations range from 1.35 feet to 1.56 feet above the 100-year water surface elevations in Waller Creek.
3. FUTURE WALLER CREEK TUNNEL IMPACTS. If the applicant submitted this site plan application after the completion of the City’s Waller Creek Tunnel project, which is currently projected to be late 2014, it would be in compliance with the floodplain regulations and not require any floodplain variances.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-7-61 Criteria for Approval of Plats, Construction Plans, and Site Plans states that a final plat, subdivision construction plan, or site plan may not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property.

***VARIANCE REQUESTED:** The applicant requests a variance to allow the development to be constructed in a manner that causes adverse flooding impacts to other properties.*

- II. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.4 Activities in riverine flood hazard areas states that the building official shall not permit any new construction, substantial improvement or other development, including fill, unless the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the design flood elevation at any point that results in additional adverse flooding on other property.

***VARIANCE REQUESTED:** This variance is due to the fact that the development causes increases in the level of the design flood that result in additional adverse flooding on other property.*

- III. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.5 Floodway Encroachment states that prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the building official shall require submission of a certification by a Professional Engineer licensed by the State of Texas, along with supporting technical data in accordance with the City of Austin Drainage Criteria Manual, that demonstrates that such development will not cause any increase of the level of the design flood.

VARIANCE REQUESTED: *This variance is due to the fact that the development causes increases in the level of the design flood.*

- IV. LDC Section 25-12-3 Local Amendments to the Building Code, Appendix G Flood-Resistant Construction, G103.5.1 Floodway revisions states that a floodway encroachment that increases the level of the design flood may be considered for a variance only if the applicant has applied for a conditional Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency (FEMA).

VARIANCE REQUESTED: *This variance is due to the fact that the development encroaches into the floodway, causes increases in the level of the design flood, and the applicant has not applied for or received approval of the required conditional revision to FEMA.*

- V. LDC Section 25-12-3 (Local Amendments to the Building Code), Appendix G Flood-Resistant Construction, G103.6.1 Engineering analysis states that the building official shall require submission of an engineering analysis in accordance with the City of Austin Drainage Criteria Manual performed and sealed by a Professional Engineer licensed by the State of Texas which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased.

VARIANCE REQUESTED: *The applicant requests a variance to not submit engineering analysis.*

- VI. LDC Section 25-7-31 Director Authorized to Require Drainage Studies states that the director may require the owner of real property to provide, at the owner's expense and as a condition for preliminary plan approval, a drainage study for the total area to be ultimately developed.

VARIANCE REQUESTED: *The applicant requests a variance to not submit a drainage study.*

- VII. LDC Section 25-7-94 Exceptions in the Central Business Area states that the floor slab of a proposed building is at least two feet above the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to the finished floor requirement in the central business area due to two locations where the finished floor elevations are not two feet above the current effective 100-year floodplain elevation.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G 105 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 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.

FINDING

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies constructing a retaining wall that causes increases in flood heights to other property owners.

2) **CONDITION IS NOT MET.** The applicant has not demonstrated that the failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable. The size and location of the floodplain allow the lot to be reasonably developed without a floodplain variance.

3) **CONDITION IS NOT MET.** The proposed development would increase flood heights.

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.

4) **CONDITION IS NOT MET.** The lot is currently a surface parking lot. However, the size and location of the floodplain on the lot allow the lot to be reasonably developed without a floodplain variance.

5) **CONDITION IS MET.** The lowest finished floor elevation of the hotel will be 1.35 feet above the 100-year floodplain elevation.