

**Recommendation for Council Action – Backup  
Floodplain Variance Request – The Park**

**SUMMARY OF FINDINGS:**

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The applicant's engineer submitted technical data that indicates that the proposed development will not increase flood heights.
2. NO SAFE ACCESS. The depth of water at the curb in front of this property is 1.9 feet during the 100-year flood event and 1.3 feet during the 25-year event. The depth of water at the proposed building will be 1.0 feet during the 100-year flood event and 0.5 feet during the 25-year event. First responder personal and building occupants do not have safe access to and from the proposed building during a 100-year event.
3. PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed building will have its finished floor elevation above 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 ground floor of the proposed building is 3.3 feet above the 100-year floodplain.
4. HARDSHIP CONDITIONS FOR THE PROPERTY EXIST. The functioning restaurant building that was on this property was demolished in 2007. Failure to allow construction of a new building within the floodplain would impact the potential use of the property. The property meets the hardship conditions criteria as defined in the Building Code.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. 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 a mixed-use 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 entire lot is in 100-year floodplain and more half of the lot is located within the 25-year floodplain. A summary of the depth of water during the 100-year flood event can be found below:*

Depth of water:	100-year flood event	25-year flood event
At the street	1.9 ft.	1.3 ft.
At the front of the proposed building	1.0 ft.	0.5 ft.

- II. 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 exclude the footprint of the proposed building from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

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

***VARIANCE REQUESTED:*** *The applicant requests a variance to allow placement of a building and associated parking within the 25-year and 100-year floodplains of East Bouldin Creek.*

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

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, 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*

### **FINDING**

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the demolition of the previous building in order to re-develop the property with a higher density use where there is no safe access out of the floodplain.

2) **CONDITION IS MET.** The functioning restaurant building that was on this property was demolished in 2007. There are currently no buildings on this lot. Failure to grant this variance would render the lot undevelopable.

*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 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 building without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** The functioning restaurant building that was on this property was demolished in 2007. Failure to grant this variance would render the lot undevelopable. However, the size and occupancy level of the proposed building are not the minimum necessary to afford relief.

5) **CONDITION IS MET.** The finished floor elevations of the proposed buildings will be a minimum of one-foot above the 100-year floodplain elevation.