

ORDINANCE NO. 20140828-142

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 4515 SPEEDWAY FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A DUPLEX IN THE 25 AND 100-YEAR FLOODPLAINS; ESTABLISHING CONDITIONS FOR THE VARIANCES; AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. This ordinance applies to the construction of a two-story duplex after demolition of an existing single family residence located at 4515 Speedway within the 25 and 100-year floodplains as described in Building Permit application number 2014-043204 PR.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.7 (*Conditions for Issuance*). Council finds that the variances granted by this ordinance are the minimum necessary to afford relief, are based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variances granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25-year and 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*), to exclude the footprint of the two-story duplex from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (C) the requirement that normal access to the building be by direct connection with an area at least one foot above the design flood elevation, prescribed by City Code Section 25-12-3, Building Code Section 1612.4.3 (*Means of Egress*); and

- (D) the requirement that a non conforming use not be expanded, changed, or altered in a way which increases its nonconformity, prescribed by City Code Section 25-12-3, Building Code Section G102.3 (*Nonconforming Uses*).

PART 4. The variances granted in this ordinance are effective only if the applicant meets the following conditions:

- (A) The applicant shall dedicate an easement to the City as required by City Code Section 25-7-152 to the limits of the 100 year floodplain, excluding the two-story duplex. The City may not issue a Certificate of Occupancy for the duplex until the applicant submits all information and documentation necessary for the easement, and the easement as approved by the City Attorney is filed by the applicant in the Official Records of Travis County, Texas.
- (B) The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the building, signed by a professional land surveyor, engineer or architect authorized by law to certify elevations, before the City may issue a Certificate of Occupancy for the building.

PART 5. This variance expires if the project for which this variance is granted does not receive a Building Permit before September 8, 2015.

PART 6. Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services. Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

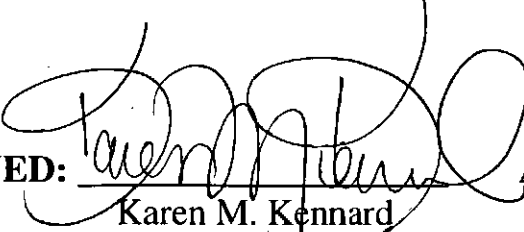
PART 7. This ordinance takes effect on September 8, 2014.

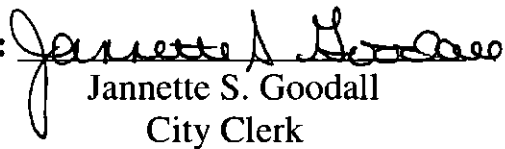
PASSED AND APPROVED

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August 28, 2014

Lee Leffingwell
Mayor

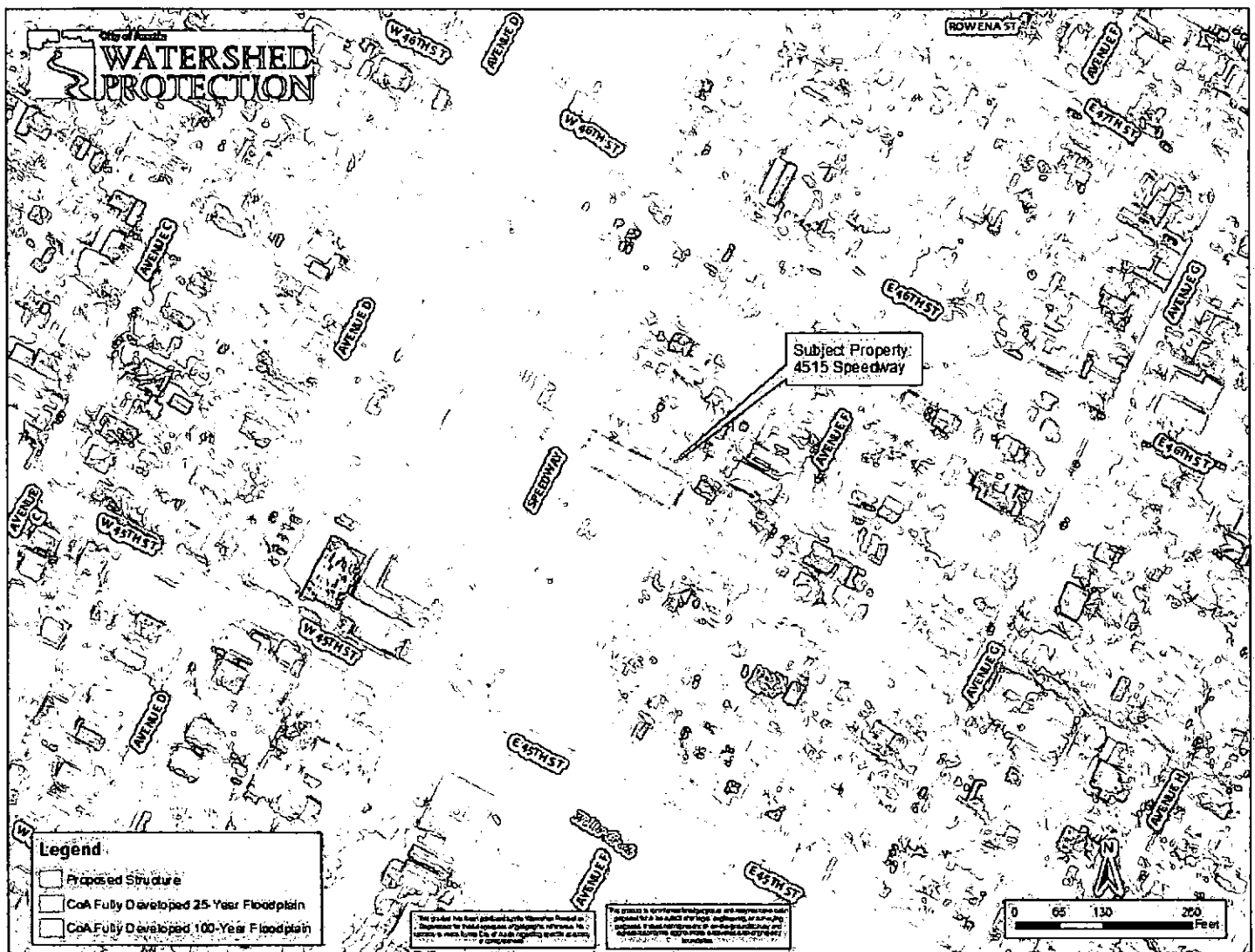
APPROVED: 
Karen M. Kennard
City Attorney

ATTEST: 
Jannette S. Goodall
City Clerk

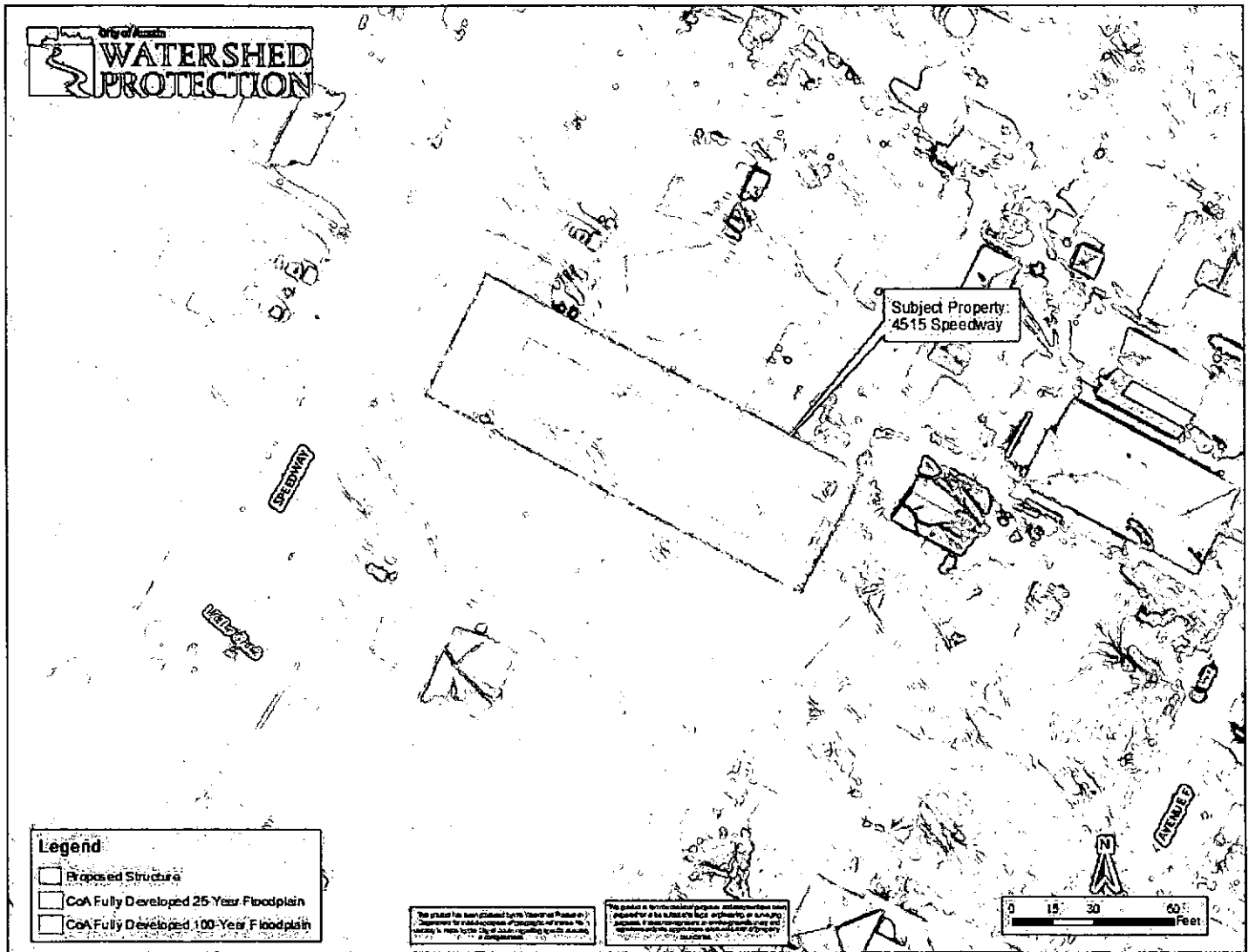
Backup Information Packet

Concerning a public hearing to consider an ordinance authorizing floodplain variance to construct a new 2 story duplex at 4515 Speedway, which is in the 25-year and the 100-year floodplains of Waller Creek.

Site Location Map with Current Floodplains for 4515 Speedway



Zoomed in Site Location Map at 4515 Speedway



**Recommendation for Council Action – Backup
Floodplain Variance Request – 4515 Speedway**

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 proposed duplex will be 1.5 feet during the 100-year flood event and 1.1 feet during the 25-year flood event. The depth of water at the curb in front of this property is 2.1 feet during the 100-year flood event and 1.7 feet during the 25-year flood event. First responder personnel do not have safe access to the house during a 100-year flood event.
3. **ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The development increases the opportunity for human occupancy in the floodplain by increasing the conditioned area on the property. The development increases the conditioned living space within the 100-year floodplain from 672 square feet to 2,775 square feet.
4. **PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION.** The proposed duplex 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 proposed duplex is 1.2 feet above the 100-year floodplain.
5. **HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST.** There is an existing house on the lot that is occupied. Failure to allow this development that increases density within the floodplain would not impact the single-family use of the lot. The property does not have a hardship 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 duplex 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 the 100-year floodplain and partially in the 25-year floodplain. The floodplain depth at the curb line of 4515 Speedway is approximately 2.1 feet during the 100-year flood event and 1.7 feet during the 25-year flood event.

- II. 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 enlargement of the total conditioned area on the property that does not have safe access out of the 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 requests a variance to exclude the entire property from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. 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 within the 25-year and 100-year floodplains of Waller 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 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.*

FINDING

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies increasing density on this property where there is no safe access out of the floodplain.

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.

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.*

2) **CONDITION IS NOT MET.** The single-family dwelling currently on this lot has been in use since 1934. If the proposed development is not approved, the house would remain in its existing condition. Failure to grant this variance would not render the lot undevelopable.

3) **CONDITION IS NOT MET.** While the proposed development does not increase flood heights, it does increase the threat to public safety, because more occupants could be located in the duplex without safe access for the occupants or first responders.

4) **CONDITION IS NOT MET.** The property currently provides a reasonable use as a single-family residence. Increasing the conditioned area on the property by 413% is not considered the minimum necessary.

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.

5) **CONDITION IS MET.** The finished floor elevation of the proposed duplex will be 1.2 feet above the 100-year floodplain elevation.