

**Recommendation for Council Action – Backup
Floodplain Variance Request – 6109 Oakclaire Drive**

SUMMARY OF FINDINGS:

1. UNKNOWN FLOODPLAIN IMPACTS. The applicant has not submitted an engineering analysis of the impacts the proposed development may have on flood levels. These impacts could affect adjacent properties that are currently developed.
2. NO SAFE ACCESS. The depth of water in the street in front of this property is 2.4 feet during the 100-year flood event and 1.4 feet during the 25-year flood event. The depth of water at the proposed single family residence will be 3.6 feet during the 100-year flood event and 2.6 feet during the 25-year flood event. The occupants of the building and first responder personnel do not have safe access to and from the house during a flood 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 proposed single family residence is 1.8 feet above the 100-year floodplain.
4. HARDSHIP CONDITIONS FOR THE PROPERTY MAY EXIST. There is currently no residential building on the property. Failure to grant certain variances would result in an exceptional hardship by rendering the lot undevelopable. However, the significance of not submitting an engineering study should be considered when determining the applicability of the hardship condition.

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 single family 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 entire lot is in the 100-year and the 25-year floodplains of the Gaines Tributary of Barton Creek. The floodplain depths on the property are shown in the table below:*

Depth of water:	100-year flood event	25-year flood event
At the street	2.4 ft.	1.4 ft.
At the front of the proposed residence	3.6 ft.	2.6 ft.

- II. 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.*

- III. 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 in riverine situations, 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 adverse flooding impact on other property.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section G103.4, to allow a single family residential building to be constructed without providing an analysis sealed by a registered professional engineer demonstrating that the proposed development will not have an identifiable adverse impact on surrounding properties.*

- IV. 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: *The applicant requests a variance to Building Code Section G103.5, to allow a single family residential building to be constructed without providing an analysis sealed by a registered professional engineer demonstrating that the proposed development will not cause any increase of the level of the design flood.*

- V. LDC Section 25-12-3, (Local Amendments to the Building Code), Appendix G Flood-Resistant Construction, G401.1 Development in floodways states that development or land disturbing activity shall not be authorized in the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed and sealed by a Professional Engineer licensed by the State of Texas in accordance with the City of Austin Drainage Criteria Manual that the proposed encroachment will not result in any increase in the level of the design flood

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section G401.1, to allow a single family residential building to be constructed without providing an analysis sealed by a registered professional engineer demonstrating that the proposed development will not cause any increase of the level of the design flood.*

VI. 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 adverse flooding impact on other property.

VARIANCE REQUESTED: *The applicant requests a variance to this section to allow the development to occur without demonstrating through a drainage analysis that the development will not result in additional adverse flooding impact on other property.*

VII. 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 the Gaines Tributary of Barton Creek.*

VIII. 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.*

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

FINDING

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the request for variances to: not submit an engineering study; and construct a single family residence in the floodplain where there is no safe access out of the floodplain.

2) **CONDITION IS NOT MET.** There is currently no residential building on the property.

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 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

Failure to grant certain variances would result in an exceptional hardship by rendering the lot undevelopable. However, the significance of not submitting an engineering study should be considered when determining the applicability of the hardship condition.

3) **CONDITION IS NOT MET.** The proposed development may increase flood heights. The development does increase public safety threat because more occupants could be located in the single family residence without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** A variance to the requirement to submit an engineering analysis would not be considered the minimum necessary to afford relief since the analysis could be completed.

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

below the base flood level increases risks to life and property.