

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 1130 Spur St.**

**SUMMARY OF FINDINGS:**

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. City of Austin staff have determined that the constructed buildings do not increase flood heights.
2. THE PROPOSED LOWEST FLOORS DO NOT MEET THE MINIMUM REQUIRED ELEVATION. The lowest floor elevation of the two residential buildings as built are 0.33 feet and 0.29 feet below the 100-year floodplain elevation, which is approximately 1.3 feet below the required elevation and 1.6 feet below the elevation specified on the approved plans.
3. NO SAFE ACCESS. The depth of water at the proposed buildings and in the street will be approximately one foot during the 100-year flood event. The safe access regulation requires that the buildings be connected to the right-of-way by a pathway that's at least one foot above the 100-year floodplain.
4. HARDSHIP CONDITIONS FOR THE PROPERTY PARTIALLY EXIST. The safe access rule presents a hardship for this site since safe access to the property cannot be achieved to a public right-of-way. However, the buildings as initially permitted were in compliance with City of Austin requirements for construction in the 100-year floodplain. Failure to construct the buildings as permitted does not constitute a hardship.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. LDC Section 25-12-243, (Local Amendments to the Residential Code), Section R322.2.6 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 Residential Code Section R322.2.6, to allow a new single family residential building and secondary apartment be permitted without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The lot is entirely in the 100-year floodplain of Tannehill Branch. The depth of the 100-year floodplain on the property and in the street is approximately one foot.*

- II. LDC Section 25-12-243, (Local Amendments to the Residential Code), Section R322.2.1 Elevation Requirements establishes the minimum elevation for buildings in a floodplain. In areas of shallow flooding (FEMA Zone AO), the lowest floor of a building must be at a minimum equal to the highest adjacent grade plus the depth number specified in feet on the FEMA floodplain map plus one foot.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Residential Code Section R322.2.1 to allow a new single family residential building and secondary apartment be permitted*

*that were constructed below the required elevation. The buildings are approximately 1.3 feet below the required elevation.*

- 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 footprint of the buildings from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-7-92 (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building on the 100-year floodplain.

***VARIANCE REQUESTED:*** *The applicant requests a variance to allow placement of the buildings within the 100-year floodplain of Tannehill Branch.*

## **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;*

### **FINDING**

- 1) **CONDITION IS NOT MET.** The applicant demonstrated through the initial permitting process that it is possible to construct the desired buildings without the need for variances. There are no unique characteristics of the site that require the requested variances.

- 2) **CONDITION IS NOT MET.** The applicant was able to obtain permits to construct the buildings without the requirement for variances. Failure to grant the variances would still allow the owner to develop the property in compliance with the original permits.

*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

3) **CONDITION IS NOT MET.** The proposed redevelopment does not increase flood heights. However, the redevelopment does increase flood risks as compared to the permitted development resulting in increased potential for future flood insurance claims. Additionally, flood insurance premiums on the buildings as they exist today will be more expensive as they will be new construction that is subject to inundation during a 100-year flood event.

4) **CONDITION IS NOT MET.** The construction of the two buildings was permitted in accordance with the floodplain regulations. The requested variances are to approve a revision that is necessary due to the homes not being constructed according to the approved plans and unable to pass inspection as currently constructed.

5) **CONDITION IS MET.** The applicant has been made aware of these consequences. However, notification to the applicant in writing over the signature of the building official will be provided in the event the requested variances are granted.

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