Recommendation for Council Action – Backup
Floodplain Variance Request – 1213 Fort Branch.

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADDTIONAL FLOODING ON OTHER PROPERTY. The applicant's engineer certified that the two proposed buildings do not result in additional adverse flooding on other properties.

2. NO SAFE ACCESS. The proposed development does not provide safe access (defined as one-foot above the 100-year floodplain) to the right-of-way. The depth of inundation along the access path is approximately 1.9 feet for Proposed Building 1 (the front building) and 2.0 feet for Proposed Building 2 (the rear building). As a result, both first responders and building occupants do not have safe vehicular or pedestrian access to or from the building during a 100-year flood event.

3. THE FINISHED FLOOR ELEVATIONS OF THE TWO PROPOSED BUILDINGS ARE AT THE MINIMUM REQUIRED ELEVATION. The finished floor elevations of the proposed buildings are 2.0 feet above the 100-year floodplain.

4. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. While satisfying the safe access regulation for the proposed dwelling units is not possible because of the extent of the floodplain, this lot could be developed with one new dwelling unit that could be approved administratively by staff. This request for relief of the regulations is not considered a hardship.

APPLICABLE CODE AND VARIANCES REQUESTED

I. Land Development Code Section 25-12-53 (Flood loads) (C)(4)(a) Means of Egress - 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 Technical Code Section 25-12-53 (C)(4)(a), to allow two residential buildings 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 depth of inundation along the access path is approximately 1.9 feet for Proposed Building 1 and 2.0 feet for Proposed Building 2.*

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

VARIANCE REQUESTED: *The applicant requests a variance to allow placement of two Single family dwellings within the City of Austin 25-year and 100-year floodplain of Fort Branch. One proposed building is within the City of Austin 25-year and 100-year*

floodplain, and the one proposed building is only within the City of Austin 100-year 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 eliminate the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain. The applicant proposes to dedicate a drainage easement to the full extent of the floodplain less the two proposed building footprints.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-54, Technical Codes, F.7 Conditions for issuance, variances shall only be issued upon consideration of the following prerequisites:

PREREQUISITE	**FINDING**
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.*	1) **CONDITION IS NOT MET.** There is not good and sufficient cause to justify two new dwelling units on this property.
2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.	2) **CONDITION IS NOT MET.** Failure to grant this variance would not result in exceptional hardship by rendering the lot undevelopable because one new dwelling

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.

unit could be approved administratively by staff.

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.

3) **CONDITION IS PARTIALLY MET.** The proposed development does not increase flood heights. The development does increase the public safety threat because two new buildings are proposed in the floodplain without safe access for the occupants and first responders.

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.*

4) **CONDITION IS MET.** The proposed buildings will have their finished floors 2.0 feet above 100-year floodplain. The safe access variance request is the minimum necessary considering the flood hazard to afford relief.

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 two proposed buildings will be 2.0 feet above the 100-year floodplain elevation.