

Mike Hebert 5/1/13

Good evening. I am Mike Hebert. My wife and I reside on Waller Creek south of the Hancock Golf Course and near Lee Elementary School.

I am here to ask for your help in persuading City Staff to properly interpret the City Code requirement for the filing of a site plan for new construction in the 100-year flood plain and to exercise its full power and authority to protect our Waller Creek Watershed.

Currently, the Planning Department and the Watershed Protection Department are processing building permits for Kevin Cutsinger to build 3 duplex buildings on Harris Avenue adjacent to Waller Creek, which includes 18 on-site parking spaces accessed from an alley that dead-ends into the creek, on a site substantially in the 100-year flood plain. And, yes, I said 18 parking spaces. Staff has ruled that this site is grandfathered from the site plan requirement in the City Code because the subdivision was platted before 1983. I believe that Staff is misreading the ordinances and that they are shirking their duty to protect the watershed.

Briefly, the general rule is that a site plan must be approved before a person may develop a property. [Sec. 25-5-1].

There are exemptions. One exemption is for duplex residential. But a site plan is required for duplex residential if the site is within the 100-year flood plain or unless the director determines that the proposed improvement will have an insignificant effect on the waterway. [Sec. 25-5-2]

In the case of the Harris Avenue project, I don't believe that the director made such a determination. Instead, Staff ruled that the site is grandfathered from a requirement to even file a site plan because the site was subdivided before 1983. This is not what the ordinance says. Section 25-7-93 says that

a site plan may be approved for a duplex residential structure in a subdivision recorded before a date in 1983. This section does not exempt the applicant from filing a site plan, nor does it exempt the director of his obligation to make a finding regarding the effect of the construction on the waterway. I believe that once a site plan is filed, Staff has a much broader prerogative to consider all of the off-site impacts of a development such as this.

In addition to what is proposed on this site, Watershed Protection, Public Works, and PDRD are considering an application by Mr. Cutsinger to do substantial cut and fill work in the public right of way in the adjacent alley that is in the 100-year flood plain and carries substantial storm water runoff into the creek. I believe that the City of Austin should not even consider doing this and that it should exercise its prerogative to just say “no” to any substantial landfill in the 100-year flood plain on a public right-of-way.

What Mr. Cutsinger is building is a small apartment project masquerading as 3 duplex buildings. Thus far, City Staff (with the concurrence of the City Attorney’s office) has repeatedly said that it has a ministerial duty to approve these building permits. I submit to you that their duty is absolutely to the contrary, and that for the City not to exercise all of its power and authority to protect its watersheds and its citizens, the City becomes a partner in the degradation of Waller Creek.

So, I respectfully ask that you study these two questions and recommend to the City Staff that they change their current practices.

Thank you.