

**Recommendation for Council Action – Backup
Floodplain Variance Request – 506 West Avenue**

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The applicant’s engineer certified that the proposed development does not result in additional adverse flooding impact on other properties.
2. NO SAFE ACCESS. The proposed development’s access point to the right-of-way is located in the 25-year and 100-year floodplains. The depth of water during a 100-year flood event at West Avenue is approximately 9 feet. First responder personnel and building occupants do not have safe access to and from the building during a 25-year or 100-year flood event.
3. HARDSHIP CONDITIONS FOR THE PROPERTY DO EXIST. The lot is located entirely in the 25-year and 100-year floodplains. The means of egress regulation presents a hardship since safe access for the property cannot be achieved to a public right-of-way. However, this hardship existed prior to the current owner purchasing the property.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-12-53, (Flood Loads) (C)(4) 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 Section 25-12-53(C)(4), to allow a 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 depth of the 100-year floodplain at the garage entrance is nearly 9 feet with a velocity of 3 feet/second.*

- 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 a building within the 25-year and 100-year floodplains of Shoal Creek.*

- 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 proposed building footprint.*

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

- 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; 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.

FINDING

- 1) **CONDITION IS NOT MET.** There is no technical showing of good and sufficient cause for the owner of the property to propose a building with such a high residential density on the property. In addition, this property has been in the 100-year floodplain since 1981, before the current owner purchased the property.

- 2) **CONDITION IS NOT MET.** While this property cannot be developed to satisfy the safe access requirement, this situation existed before the current owner purchased the property.

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

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

4) **CONDITION IS NOT MET.** This property cannot be developed in compliance with the floodplain regulations, particularly the safe access requirement. However, a use other than high density residential would minimize flood risk to occupants at this location.

5) **CONDITION IS MET.** The finished floor elevation of the proposed building will be a minimum of 2.0 feet above the 100-year floodplain elevation.