

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 209 Nelray Blvd.**

**SUMMARY OF FINDINGS:**

1. THE DEVELOPMENT DOES NOT CAUSE ADDITIONAL FLOODING ON OTHER PROPERTY. The applicant's engineer certified that the converted building does not result in additional adverse flooding on other properties.
2. NO SAFE ACCESS. The converted building's access to the right-of-way is located in the 100-year floodplain. The depth of water during a 100-year flood event at Nelray Blvd. is 1.5 feet. First responder personnel and building occupants do not have safe access to and from the building during a 100-year flood event.
3. THE CONVERTED BUILDING'S FINISHED FLOOR ELEVATION IS BELOW THE MINIMUM REQUIRED ELEVATION. The finished floor of a building within the 100-year floodplain is required to be a minimum of 2 feet above 100-year floodplain elevation. The applicant is proposing not to elevate the converted building's finished floor elevation to comply with the requirement. The finished floor of the building is 646.03 feet, equating to the depth of 1.5 feet of inundation during a 100-year flood event.
4. THE DEVELOPMENT IN THE FLOODPLAIN HAS NOT BEEN CERTIFIED TO WITHSTAND THE FORCES OF FLOOD WATERS. The construction of the building in the floodplain has not been certified to withstand the forces of flood waters. During the time of a flood, materials and debris may be swept onto other lands resulting in further injury and damage.
5. HARDSHIP CONDITIONS FOR THE PROPERTY DO EXIST. The lot is located entirely in the 100-year floodplain. The means of egress code regulation presents a hardship since safe access for the property cannot be achieved to a public right-of-way.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. Land Development Code Section 25-12-53 (Flood Loads) (C)(1)(a) Elevation Requirements provides that the lowest floor of the building shall be elevated a minimum of 2 feet above the design flood elevation.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Section 25-12-53 (C)(1)(a) to allow a building to be constructed without the lowest floor a minimum of two feet above the design flood elevation.*

- II. LDC Section 25-12-53 (Flood Loads) (C) Design and Construction requires that the building is designed and constructed with flood resistance material to minimize flood damage.

***VARIANCE REQUESTED:*** *The applicant requests a variance to not certify that the building has been designed and constructed in accordance with ASCE 24, Flood Resistant Design and Construction.*

- III. 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 Technical Code Section 25-12-53.C.4, to allow a 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 depth of the 100-year floodplain on the property is 1 foot.*

- IV. 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 an accessory building within the 25-year and 100-year floodplains of Waller Creek.*

- V. 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 converted garage building and primary single-family dwelling.*

#### **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.

##### **FINDING**

- 1) **CONDITION IS NOT MET.** The applicant has not shown good and sufficient cause to allow the conversion of the garage structure into an occupied building that does

*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.*

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.

not satisfy the floodplain regulations regarding freeboard. It is possible to elevate the garage conversion in a way which complies with the freeboard requirements.

2) **CONDITION IS PARTIALLY MET.**

The lack of safe access presents a hardship since safe access for the property cannot be achieved to the public right-of-way. The freeboard variance request does not result in exceptional hardship since the conversion could have been done or still could be done to satisfy the freeboard requirements.

3) **CONDITION IS PARTIALLY MET.**

The development does not increase flood heights. The development does increase the public safety threat because a new accessory building is 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.*

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.

4) **CONDITION IS NOT MET.** The proposed building will not have its finished floor a minimum of 2 feet above 100-year floodplain. The safe access variance request is the minimum necessary considering the flood hazard to afford relief.

5) **CONDITION IS NOT MET.** The finished floor elevation of the accessory building is 1.5 feet below the 100-year floodplain elevation.