

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 419 W. Johanna Street**

**SUMMARY OF FINDINGS:**

1. THE PROPOSED DEVELOPMENT ENCROACHES ON THE 100-YEAR FLOODPLAIN OF EAST BOULDIN CREEK.
2. THE DEVELOPMENT WILL CAUSE AN ADVERSE IMPACT TO FLOODING ON OTHER PROPERTIES. The proposed development will result in fill being placed within the floodplain without providing compensatory cut. The placement of fill in the floodplain without compensatory volume excavation does have hydrologic impacts, which combined with other areas of floodplain fill, causes an adverse flooding impact to other properties. However, the applicant's engineer has demonstrated that the development alone will not increase flood heights.
3. NO SAFE ACCESS. The depth of water at the curb of W. Johanna Street at the front of the existing house is approximately 3.6 feet during the 100-year flood event and 2.3 feet during the 25-year flood event. The proposed house is further from Johanna Street than the existing house. First responder personnel will not have safe access to either house during a 100-year flood event.
4. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed development would increase the opportunity for human occupancy in the floodplain by adding 3,219 square feet of conditioned area with the proposed house.
5. PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed house exceeds the minimum elevation requirements of one-foot above the 100-year floodplain elevation. The proposed finished floor will be 2.0 feet above the 100-year floodplain. The finished floor elevation of the existing house on the lot is 0.2 feet below the 100-year floodplain elevation.
6. A HARDSHIP CONDITION FOR THE PROPERTY DOES NOT EXIST. The development could be designed to compensate for more floodplain volume displacement. In addition, the existing house that is below the 100-year floodplain could be demolished to reduce potential flood hazards on the property.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. LDC Section 25-7-61 (Criteria for Approval of Plats, Construction Plans, and Site Plans) states that a site plan may not be approved unless the proposed development will not result in additional identifiable adverse flooding on other property.

***VARIANCE REQUESTED:*** *The applicant requests a variance to allow the development to not be required to compensate for the entire floodplain volume displaced by the development's fill material in the 100-year floodplain. The applicant has provided information that indicates that the development will not result in increased flood heights.*

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

***VARIANCE REQUESTED:*** *The applicant requests a variance from LDC Section 25-7-92(B) to allow encroachment of the proposed building into the 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 is requesting a variance to exclude the footprints of the existing and proposed houses from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-12-3, (Local Amendments to the Building Code), Section 1612.4.3 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 Building Code Section 1612.4.3, to allow the proposed building without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. Most of the lot is within the 25-year and 100-year floodplains. The depth of water for the 25-year and 100-year floodplains at the front of the existing house is approximately 3.6 feet and 2.3 feet deep, respectively.*

- V. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Building Code Section G102.3 to allow a second single-family residence to be constructed on the lot that does not conform with the City's floodplain regulations.*

## **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

### **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*

### **FINDING**

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the location of the proposed house. It appears that the proposed building could be placed closer to the property line, which would minimize the encroachment into the floodplain. The existing house on the

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 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.*

property, which is below the 100-year floodplain, could be demolished to allow more floodplain volume and reduce flood hazards.

2) **CONDITION IS NOT MET.** Failure to grant the proposed variance will not render the lot undevelopable. The property is currently developed and is being used as a single-family residence. In addition, the development could be designed to minimize floodplain encroachment and maximize compensatory floodplain volume.

3) **CONDITION IS NOT MET.** The development does increase public safety threat because more occupants could be located on a property without safe access for the occupants and first responders. However, the development will not result in increased flood heights.

4) **CONDITION IS NOT MET.** The property is currently developed and is being used as a single-family residence. The proposed development could be designed to minimize the encroachment into the floodplain.

- *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.

5) **CONDITION IS MET.** The finished floor elevation of the proposed building is above the 100-year floodplain.