

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

SUMMARY OF FINDINGS:

1. **A HARDSHIP CONDITION FOR THE PROPERTY EXISTS.** The entire portion of the property that fronts the right-of-way of W. Johanna Street is in the 100-year floodplain. There are no realistic options for this lot to achieve the safe access required by the floodplain regulations. The applicant has exercised due diligence in attempting to design a walkway or path for safe pedestrian access without success.
2. **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 of the house will be 3.0 feet above the 100-year floodplain, and the proposed garage will be 2.0 feet above the 100-year floodplain.
3. **NO SAFE ACCESS.** The floodplain regulations require normal access to the building be at a minimum of one foot above the 100-year floodplain elevation. While the house itself is 3.0 feet above the 100-year floodplain, the access to W. Johanna Street at the proposed driveway location is approximately 1.5 feet deep during the 100-year flood event and 0.2 feet deep during the 25-year flood event.
4. **ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed development would increase the opportunity for human occupancy in the floodplain without having safe access by placing the proposed house of 3,219 square feet of conditioned area in the 100-year floodplain. However, the owners are removing the existing house on the lot, which is below the 100-year floodplain.
5. **THE PROPOSED DEVELOPMENT ENCROACHES ON THE 100-YEAR FLOODPLAIN OF EAST BOULDIN CREEK.**

APPLICABLE CODE AND VARIANCES REQUESTED

- I. 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.*

- II. 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 footprint of the proposed house from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- III. 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 during the 25-year and 100-year flood events at the front of the lot at the proposed driveway location is approximately 0.2 feet and 1.5 feet deep, respectively.*

- IV. 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 increasing the conditioned area on the lot with the proposed single-family residence. The lot is currently non-conforming since it does not satisfy the safe access requirement.*

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 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 MET.** This lot currently has a single-family building that is below the 100-year floodplain elevation. The lot cannot be redeveloped in accordance with the safe access requirement. The proposed development decreases the flood hazards on the lot by removing the existing house and constructing the proposed house 3.0 feet above the 100-year floodplain elevation.

2) 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.

3) 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.*

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.

2) **CONDITION IS MET.** The development will not result in increased flood heights. Despite the development increasing conditioned area in the floodplain without safe access, the proposed building is 3.0 feet above the 100-year floodplain elevation and the existing house is being demolished.

3) **CONDITION IS MET.** The applicant has demonstrated a good and sufficient cause that justifies the location of the proposed house. Most of the lot is within the 25-year and 100-year floodplains of East Bouldin Creek.

4) **CONDITION IS MET.** The proposed development is designed to minimize the encroachment into the floodplain and the flood risk of the proposed building.

5) **CONDITION IS MET.** The finished floor elevation of the proposed building is 3.0 feet above the 100-year floodplain elevation.