

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 1505 Parkway**

**SUMMARY OF FINDINGS**

**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. During a 100-year flood event, the water depth at the front door of 1505 Parkway would be 2.3 feet deep, which does not satisfy the floodplain regulations. Safe access could be possible on this property with moderate re-grading of the driveway, but the owner chooses to not pursue that solution.

**ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed development would increase the opportunity for human occupancy in the floodplain without having safe access by adding an 844 sq. ft. addition to the existing house, which is surrounded by the 25-year and 100-year floodplain.

**HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST.** The proposed development plan could be modified so that the property has safe access out of the floodplain. The property does not have a hardship as defined in the Building Code.

**PROPOSED CONSTRUCTION IS WITHIN THE 25-YEAR AND 100-YEAR FLOODPLAINS OF SHOAL CREEK.** Although the existing living area and proposed addition are elevated more than one foot above the 100-year flood elevation, the house is surrounded by the 25-year and 100-year floodplains.

**HISTORIC FLOODS IN THE AREA.** City records indicate that this property flooded in the 1981 Memorial Day event and in November 2001.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. 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 addition 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 entrance to the existing house is approximately 0.9 feet and 2.3 feet deep, respectively.*

- II. 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 an addition to the existing house be constructed on the lot that does not conform with the City's floodplain regulations.*

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

- IV. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits a building or parking area from encroaching on the 25-year and 100-year floodplains.

***VARIANCE REQUESTED:*** *The applicant requests a variance from LDC Section 25-7-92(A) and (B) to allow expanding a building that currently encroaches on the 25-year and 100-year floodplains.*

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

Per LDC Section 25-12-3, Technical Codes, Section G 105 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 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,*

#### **FINDING**

1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies increasing the square footage of the house without providing safe access.

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.

*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.*
- *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 NOT MET.** The proposed development does not increase flood heights. 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.

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 provide safe access out of the floodplain.

5) **CONDITION IS MET.** The proposed addition to the house is elevated 1.8 feet above the 100-year floodplain elevation.