

**Recommendation for Council Action – Backup
Floodplain Variance Request – 835 W. 6th Street**

SUMMARY OF FINDINGS

BEST AVAILABLE FLOODPLAIN INFORMATION INDICATES HIGHER FLOOD LEVELS. The City has preliminary results of a Shoal Creek floodplain study that indicates flood levels on this property are approximately 3.5 feet higher than previously thought, meaning the maximum depth of water in the parking area would be approximately 9.2 feet during the 100-year flood event and 7.6 during the 25-year flood event. This new floodplain study is expected to be finalized in the first quarter of 2012.

STRUCTURAL BOLLARDS EXIST. The property owner has installed bollards connected by steel wire at a height one-foot above the current effective 100-year floodplain elevation. This bollard system is intended to hold back cars during a flood event. The bollard system was designed by the owner's structural engineer and certified to be able to withstand the forces of the flood waters. The owner will revise the bollard design to provide protection to the updated 100-year floodplain elevation when the study is finalized.

PARKING ON THE PROPERTY IS RESERVED PARKING ONLY. The existing parking lot is used for employee parking for several businesses in the Marketplace area. No overnight or general public parking is allowed and towing is enforced. Evacuation of the parking lot prior to being flooded is likely with available flood warning data that is monitored by the owner's security staff.

EXISTING PARKING LOT IS NOT A LONG-TERM USE FOR THE PROPERTY. The property owner has submitted a site plan application to the City for a proposed mixed-use development on this property that will include a parking structure to accommodate the existing parking capacity in addition to the proposed use parking requirements. The existing parking lot will be demolished when the proposed construction is started.

HISTORIC FLOODS IN THE AREA. This property flooded during the 1981 Memorial Day event. At that time, the property use was a car dealership.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. 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 a parking area that 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

FINDING

1) **CONDITION IS MET.** The applicant has demonstrated a good and sufficient

size, configuration or topography of the site.

cause that justifies allowing the existing parking area to remain.

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;

2) **CONDITION IS MET.** This lot is entirely within the 100-year floodplain of Shoal Creek. Failure to grant the variance will render 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.

3) **CONDITION IS MET.** The existing parking area does not increase flood heights. The flood monitoring and bollard system will minimize the public safety threat compared to the previous car dealership use.

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4) **CONDITION IS MET.** The parking area is set back from Shoal Creek and has less impervious cover than the previous car dealership use.

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.

5) **CONDITION IS MET.** The existing parking lot does not include any structures.