

**Recommendation for Council Action – Backup
Floodplain Variance Request – 1000 N. Lamar**

SUMMARY OF FINDINGS:

1. PROPOSED PARKING DOES NOT SATISFY CODE REQUIREMENTS. The Land Development Code does not allow parking to encroach on the 25-year or 100-year floodplains. The proposed parking spaces on the ground floor of the building are within both the 25-year and 100-year floodplains of Shoal Creek. The flood depths for these flood events at this location are significant and present a considerable risk to the public.
2. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. The owner began construction of the existing building in 2017 based upon a floodplain variance granted by the City Council in 2016 and a site plan approved in 2017 with a 40% reduction of required parking on the property for being in the urban core. The building has been occupied and in use since its completion. There is not a hardship condition as defined by the Building Code to include parking in the floodplain.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. 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 developing the property in a manner that increases the non-conformity of the use by allowing parking to be located on the ground floor in the 25- and 100-year floodplains.*

- II. 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 a parking area within the 25-year and 100-year floodplains of Shoal Creek.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, 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.

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.

FINDING

- 1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies modifying the existing development to include parking in the floodplain.

- 2) **CONDITION IS NOT MET.** Failure to grant this variance would not render the lot undevelopable. There is an existing, active use on the site. The applicant received a floodplain variance in 2016 that did not include parking on the ground level. This allowed the applicant to receive a site development permit in 2017 and to complete construction of the building in 2018.

- 3) **CONDITION IS PARTIALLY MET.** The proposed development does not increase flood heights. However, the development does increase the threat to public safety because occupants' vehicles are at risk of flooding and may create a safety hazard when they come in contact with floodwater.

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 existing development was approved, constructed, and is in use without ground level parking. The floodplain variance that City Council approved in 2016 that did not include ground level parking was the minimum necessary to afford relief for this property. Considering the flood hazard, this request for a variance for additional parking exceeds the minimum necessary to afford relief.

5) **CONDITION IS MET.** The finished floor elevation of the conditioned space of the building is approximately 13 feet above the 100-year floodplain elevation.