

**Recommendation for Council Action – Backup
Floodplain Variance Request – 1514 W Koenig Ln**

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The applicant's engineer submitted technical data that indicates that the proposed development will not increase flood heights.
2. NO SAFE ACCESS. The proposed building access to the right-of-way is located in the 100-year floodplain. The depth of water during a 100-year flood event at Koenig Lane is 0.9 feet and the depth of water during a 25-year flood event is 0.6 feet. The depth of water during a 500-year flood event (i.e. current regulations became effective after the submittal date of the site plan) is 1.1 feet. First responder personnel and building occupants do not have safe access to and from the building during a 100-year flood event.
3. PROPOSED FINISHED FLOOR AND PARKING AREA ABOVE MINIMUM REQUIRED ELEVATIONS. The proposed building will have its finished floor elevation above the minimum elevation requirements, which require the finished floor elevation to be at least one foot above the 100-year floodplain elevation (the site plan application was submitted prior to adoption of current floodplain regulations). The finished floor elevation of the proposed building will be approximately 2.4 feet above the 100-year floodplain and 2.1 feet above the 500-year floodplain. The proposed parking area will be a minimum of 2 feet above the 100-year floodplain.
4. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The development increases the opportunity for occupancy in the floodplain by increasing the conditioned area on the property.
5. HARDSHIP CONDITIONS FOR THE PROPERTY DO EXIST. There is currently a discontinued commercial use on the property. Any future use of the existing buildings or other redevelopment on the lot would be required to comply with the floodplain regulations. The location of the lot fully in the 25-year and 100-year floodplains, as well as the safe access rule present a hardship since safe access for the property cannot be achieved to a public right-of-way. The property has a hardship as defined in the Building Code.

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 a commercial building to be constructed without normal access, either vehicular or pedestrian, to an area that is a minimum of one-foot above the design flood elevation. The entire property is surrounded by the 100-year floodplain. The proposed building has one point of access to and from the building, which traverses the 100-year floodplain. The depth of*

floodwater at this access point is 1.14 feet for the 500-year flood, 0.93 feet for the 100-year flood and 0.63 feet for the 25-year flood.

- 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 enlargement of the total conditioned area on the property that does not have safe access out of the floodplain.*

- III. 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 building and associated parking within the 25-year and 100-year floodplains of the Hancock Branch Tributary 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 MET.** The applicant has designed the proposed development to minimize flood risk to parking areas and the building by elevating the parking area a minimum of 2 feet above the floodplain elevation and proposing that 90% of the building area be located 14 feet above the 100-year floodplain. The remaining 10% of the building area will be a minimum of 2 feet above the 100-year floodplain

- 2) **CONDITION IS MET.** There is currently a discontinued commercial use on this property. Any future use of the existing buildings or other redevelopment would be required to comply with the floodplain regulations. The safe access rule presents a hardship since safe access for the property cannot be achieved to a public right-of-way.

- 3) **CONDITION IS PARTIALLY MET.** The proposed development does not increase flood heights. The proposed development provides an area of safe refuge on the lot that is a minimum of 2 feet above the 100-year flood event. The development does increase the public safety threat because more occupants could be located in building without safe access for the occupants and first responders.

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.** Redevelopment of the site that significantly increases the density within the floodplain is not considered the minimum necessary to afford relief.

5) **CONDITION IS MET.** The finished floor elevation of the proposed building will be a minimum of two-feet above the 100-year floodplain elevation.