

**Recommendation for Council Action – Backup
Floodplain Variance Request – 5205 Chico St.**

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The proposed development consists of the construction of two residential buildings that are located in a shallow flooding area. Due to the nature of the flooding in this location, the proposed development will not cause an adverse impact that increases flood heights on other properties.
2. PROPOSED BUILDINGS DO NOT MEET CODE REQUIREMENTS. Since the proposed buildings are located within the 100-year floodplain on a lot that is currently vacant there are no exceptions in the Land Development Code that allow the construction of new buildings. Additionally, the property does not have the required safe access for an administrative floodplain variance. Therefore, staff cannot approve this application administratively.
3. HARDSHIP CONDITIONS FOR THE PROPERTY PARTIALLY EXIST. The property is entirely located within the 100-year floodplain, and lacks safe access, therefore all new buildings and parking are prohibited by Code. However, the applicant is proposing to construct multiple residential buildings on the property.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-12-53 (C) (4) Means of Egress requires normal access to a building to 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 construct two residential buildings that lack safe access to the right-of-way. The depth of flooding in the right-of-way and the access to the buildings is approximately one foot.*

- II. LDC Section 25-7-92 (B) prohibits new buildings or parking areas from encroaching into the 100-year floodplain.

***VARIANCE REQUESTED:** The applicant requests a variance to Land Development Code Section 25-7-92 (B) to allow construction of two residential buildings in the 100-year floodplain.*

- 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 requests a variance to eliminate the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain. The applicant proposes to dedicate a drainage easement to the full extent of the floodplain less the proposed building footprints.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-54 (F) Flood Resistant-Construction, 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 PARTIALLY MET.**

There is technical justification as to why the applicant cannot build a residential building on the property without obtaining the requested variances. However, there is not a technical justification for the construction of a two-family development on this property.

- 2) **CONDITION IS PARTIALLY MET.** There is currently no established use on this property. However, failure to grant this variance would not affect the applicant's ability to seek a variance to construct a single-family home on the property.

- 3) **CONDITION IS PARTIALLY MET.** The proposed development does not increase flood heights and is designed in compliance with Code-required finished floor heights. However, the development does increase the threat to public safety by proposing two dwellings located in the floodplain.

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 proposed development consists of a two-family development. There is no Code conflict that would prohibit the applicant from seeking a variance to construct one single-family home on the lot.

5) **CONDITION IS MET.** The buildings are proposed to be constructed two feet above the 100-year floodplain elevation in accordance with Code requirements.