

**Recommendation for Council Action – Backup
Floodplain Variance Request – 1200 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 development's access points to the right-of-way are located in the 100-year floodplain. The depth of water during a 100-year flood event at the Grover Lane driveway is 0.6 feet and the depth of water during a 25-year flood event is 0.4 feet. The depth of water during a 100-year flood event at the Koenig Lane driveway is 0.7 feet and the depth of water during a 25-year flood event is 0.6 feet. First responder personnel and building occupants do not have safe access to and from the building during a 100-year flood event.
3. MOST OF THE LIVING UNITS' FINISHED FLOOR ELEVATIONS ARE ABOVE THE MINIMUM REQUIRED ELEVATIONS. The units in the proposed building are required to have finished floor elevations a minimum of two feet above the 100-year floodplain elevation. Five of the six units on the ground level have finished floor elevations that are at least 3 feet above the 100-year floodplain. One unit and the Leasing Area have finished floor elevations that are 2 feet above the 100-year floodplain. The remainder of the units are on four levels above the ground level.
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 NOT EXIST. There is currently a commercial use on the property. The property does not have a hardship as defined in the Building Code. Any redevelopment on the lot would be required to comply with the floodplain regulations. The location of the lot partially 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.

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. Both of the development's driveways are in the 100-year floodplain. The depth of floodwater at the Grover Ave. driveway is 0.6 feet for the 100-year flood, 0.4 feet for the 25-year flood and

maximum depth at the Koenig Lane driveway is 0.7 feet for the 100-year flood, 0.6 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 Grover Tributary of Hancock Creek of Shoal Creek watershed.*

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

FINDING

- 1) **CONDITION IS NOT MET.** The applicant has not shown a technical reason why the building couldn't be redesigned to minimize flood risk to all units.

- 2) **CONDITION IS NOT MET.** There is currently a commercial use on the property. The property does not have a hardship as defined in the Building Code. Any redevelopment on the lot would be required to comply with the floodplain regulations. The location of the lot

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.

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

partially 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.

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 a building without safe access for the occupants and first responders.

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. In addition, proposing units that have the minimum required freeboard above the 100-year floodplain is not considered the minimum necessary.

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.

for flood insurance, and that such construction below the base flood level increases risks to life and property.