

**Recommendation for Council Action – Backup
Floodplain Variance Request – 5th and West**

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 has multiple points of access to and from the building, all of which are located in the 100-year floodplain. Of these, the access point with the shortest distance to an area outside of the floodplain is located in the alley between West Avenue and Rio Grande Street. The depths of floodwaters in the alley at this access point are approximately 1.7 feet during a 100-year event and 0.0 feet during a 25-year event. First responder personnel and building occupants do not have safe access to and from the building during a 100-year flood event.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The development increases the opportunity for occupancy in the floodplain by increasing the conditioned area on the property. The development significantly increases the conditioned space from the existing office use to a high-density residential use and commercial use tower.
4. PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed building will have its finished floor elevation above the City of Austin minimum elevation requirements, which require the finished floor elevation to be at least one foot above the 100-year floodplain elevation. The finished floor elevation of the ground floor of the proposed building is 2.1 feet above the 100-year floodplain. In addition, all portions of the building below the ground floor, which is all parking and storage, will be flood proofed to an elevation of 1 foot above the 100-year floodplain elevation.
5. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. There is currently an occupied office building on the lot. Failure to allow the construction of the proposed building will not impact the current use of the existing office building. The property does not have 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 mixed-use 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 lot is in the 100-year floodplain. The proposed building has multiple points of access to and from the building, all of which are located in the 100-year floodplain. Of these access points, the stair well exit located on the northeast corner of the building that exits in to the alley between*

West Ave and Rio Grande Street provides the shortest distance to an area outside of the floodplain and shallowest depths of floodwater. The approximate depth of floodwater at the alley exit is 1.7 feet during 100-year event.

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

- IV. LDC Section 25-7-92 (A) and (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building 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 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.*

FINDING

- 1) **CONDITION IS NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the proposed building that will increase density on this property where there is no safe access out of the floodplain.

- *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.

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.*

2) **CONDITION IS NOT MET.** There is currently an office building on the site. Failure to grant this variance would not render the lot undevelopable.

3) **CONDITION IS NOT MET.** The proposed development does not increase flood heights. The development does increase public safety threat because more occupants could be located in building without safe access for the occupants and first responders.

4) **CONDITION IS NOT MET.** The property currently provides a reasonable use as a non-residential office space. Redevelopment of the site to significantly increase the density within the floodplain is not considered minimum necessary to afford relief.

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 finished floor elevations of the proposed building will be a minimum of one-foot above the 100-year floodplain elevation.