

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**686 S. STAR ROAD VARIANCE**  
**FILE NO. V-24-01**

The above-entitled Variance application came before the Star City Council for their action on September 3, 2024, at which time public testimony was taken and the public hearing was closed. The Star City Council, having requested and taken oral and written testimony, and having duly considered the matter, does hereby make the following Findings of Fact and Conclusions of Law;

**Procedural History:**

*A. Project Summary:*

The Applicant is seeking approval of a variance from City Council to the Flood Ordinance 10-1-2 to construct a residential addition without adhering to the 2' requirement to construct above the base flood elevation. The property is located at 686 S. Star Road in Star, Idaho. The subject property is generally located on the west side of N. Star Road, south of S. Main Street. Ada County Parcel No. S0418417322.

*B. Application Submittal:*

A neighborhood meeting was held on July 10, 2024 in compliance with the application submittal requirement of the Star Unified Development Code (Section 8-1 A-6 C). The land use application was deemed complete on July 15, 2024.

*C. Notice of Public Hearing:*

Notice of Public Hearing on the application for the City of Star Council was published in accordance with the requirements of Title 67, Chapter 65, Idaho Code and the Star Unified Development Code on August 4, 2024. Notice of this public hearing was mailed to property owners within three-hundred feet (300') of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Star Unified Development Code on July 30, 2024. The property was posted in accordance with the Star Unified Development Code on August 6, 2024.

*D. History of Previous Actions:*

- There are no previous applications for development on this property. The home was built in 1995. A remodel occurred in 2018.

**LAND USE:**

**VARIANCE:**

The applicant is requesting a variance to Section 10-1-2 of the Star Municipal Code Flood Ordinance regarding the Flood Protection Elevation (FPE) requirement of a new addition to an existing single-family dwelling to be two feet (2') above the base flood elevation (BFE). The owner's representative indicates that a new addition is being sought for the existing residence, and that compliance with the requirement to construct the new addition "roughly 1.6 feet above finish floor" of the existing dwelling would negatively impact the owner's accessibility within the structure due to physical mobility limitations of the owner. The applicant requests a variance from the Council to remedy this "unique hardship".

**The City of Star Floodplain Manager has reviewed the variance request and supporting documentation and has recommended denial of the request for variance before the Council. In the review letter provided by the Manager, it is stated that alternative construction options exist that would allow ADA accessibility to be achieved without the need for the variance. In addition, the letter indicates that floodplain elevations are dictated by FEMA, with the City being responsible for maintaining an ordinance requirement on the additional elevation from the base flood that is a State of Idaho standard. Finally, it is pointed out in the letter the increased risks to the well-being of the owner, given their mobility concerns, along with the increased safety risks of emergency responders due to rising floodwaters within a floodplain during a 100-year flood event, should these standards not be followed.**

**The Council should consider the entire record and testimony presented at their scheduled public hearing, including testimony from the applicant and additional input from the City Flood Administrator, and any additional public testimony prior to rendering its decision on the matter. Council should determine if the approval of the variance to allow the addition to the existing residential structure without the addition being elevated 2' above the base flood elevation would meet the following:**

- a. Variations shall only be issued upon:
  - 1) A showing of good and sufficient cause;
  - 2) A determination that failure to grant the variance would result in exceptional hardship; and
  - 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

E. *Letters/Emails from the Public or Agencies:*

Idaho Department of Water Resources      May 23, 2024 Via Email

F. *Unified Development Code Provisions and Conformance:*

**Unified Development Code**

**Chapter 1 Flood Ordinance:**

**10-1-2: Definitions**

FLOOD PROTECTION ELEVATION (FPE): The base flood elevation plus the freeboard.

1. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet (2') of freeboard; and
2. In special flood hazard areas where no BFE has been established, this elevation shall be at least two feet (2') above the highest adjacent grade.

**10-1-4: Administration**

C. Floodplain Development Application, Permit, And Certification Requirements:

2. Permit Requirements: The floodplain development permit shall include, but not be limited to:

- a. A complete description of all the development to be permitted under the floodplain development permit (i.e. house, garage, pool, septic, bulkhead, cabana, pole barn, chicken coop, pier, bridge, mining, dredging, filling, rip-rap, docks, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- b. The special flood hazard area determination for the proposed development in accordance with available data specified in subsection 10-1-3B.
- c. The flood protection elevation required for the lowest floor and all attendant utilities.
- d. The flood protection elevation required for the protection of all utility equipment and machinery.

E. Variance Procedures:

1. The City Council, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this chapter.
2. Variances may be issued for:
  - a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued

- designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
- b. Functionally dependent facilities, if determined to meet the definition as stated in section 10-1-2, provided provisions of subsections E8b, E8c, and E8d have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - c. Any other type of development, provided it meets the requirements of this section.
3. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
    - a. The danger that materials may be swept onto other lands to the injury of others;
    - b. The danger to life and property due to flooding or erosion damage;
    - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
    - d. The importance of the services provided by the proposed facility to the community;
    - e. The necessity to the facility of a waterfront location as defined under section 10-1-2 as a functionally dependent facility, where applicable;
    - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
    - g. The compatibility of the proposed use with existing and anticipated development;
    - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
    - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
    - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
    - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
  4. The applicant shall include a written report addressing each of the above factors in subsections E3a through E3k with their application for a variance.
  5. Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.
  6. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to twenty five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

7. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of Idaho upon request.
8. Conditions For Variances:
  - b. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - c. Variances shall not be issued within any designated floodway if the variance would result in any increase in flood levels during the base flood discharge.
  - d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - e. Variances shall only be issued prior to development permit approval.
  - f. Variances shall only be issued upon:
    - 4) A showing of good and sufficient cause;
    - 5) A determination that failure to grant the variance would result in exceptional hardship; and
    - 6) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**FINDINGS:** The council has based its determination on the variance request upon the following:

1. A showing of good and sufficient cause;

*The Council finds that good and sufficient cause has not be proven by the applicant that can result in Council approval of this variance. This is based on the testimony by the City Engineer, including information in the record that shows the negative impact the actions by the Council would cause to the City of Star.;*

2. A determination that failure to grant the variance would result in exceptional hardship; and

*The Council finds that there is not an undue hardship associated with the characteristics of the site that the approval of the variance will relieve. There are alternative measures that can be taken by the applicant to construct an addition to the dwelling that would allow conformance to the flood ordinance without the need for a variance.*

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

*The Council finds that the approval of this variance would be detrimental to the public health, safety and welfare. The construction of the addition to the dwelling within the floodplain, without compliance to the Flood Protection Elevation (FPE) would result in increased flood heights, could result in additional threats to public safety, including that the applicant, first*

*responders and neighboring property owners, and could create extraordinary public expense, by way of increased or canceled flood insurance throughout the City. The City Engineer has determined that the approval of the variance would result in a conflict with local laws or ordinances, in addition to Federal ordinances, including that of FEMA.*

**Public Hearing of the Council:**

- a. A public hearing on the application was held before the City Council on August 20, 2024 and September 3, 2024, at which time testimony was heard and the public hearing was closed. The City Council made their decision at that time.
  
- b. Oral testimony in favor of the application was presented to the City Council by:
  - Bruce Hessing – Applicants Representative
  - Chris Haener
  - Tom Walls
  
- c. Additional Oral testimony to the application was presented to the Council by:
  - Ryan Morgan – City Engineer

**Deliberations and Conclusions of Law:**

The Council reviewed the particular facts and circumstances of this proposed variance request in accordance with the City of Star Municipal Code, deliberated on the matter, resulting in discussions on the request.

Council finds that the request does not meet the requirements necessary for the Council to grant the variance.

Council added that the Planning Department would refund the application fee to the applicant.

The Council voted unanimously to deny the Variance request on September 3, 2024.

Dated this 17<sup>th</sup> day of September, 2024.

Star, Idaho

By: \_\_\_\_\_  
Trevor A. Chadwick, Mayor

ATTEST:

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Jacob M. Qualls, City Clerk