



## CITY OF STAR

# ENGINEERING DEPARTMENT MEMO

**TO:** Mayor & Council  
**FROM:** Ryan V. Morgan, P.E., CFM City Floodplain Manager  
**MEETING DATE:** **September 3, 2024**  
**RE:** **686 S Star Road, Floodplain Variance**

### ACTION

Mr. Mayor and members of the City Council, thank you for the opportunity to provide you with additional information regarding the Floodplain Variance Application for 686 S Star Road. Per the council direction at the August 20, 2024, council meeting, I have done some additional research and met with the State Floodplain Coordinator. Below are several items I would like to present to the council for consideration in reviewing this application.

First, the structure located at 686 S Star Road was purchased by Mr. and Mrs. Gruner during July of 2019. The home was originally constructed in 1995 in unincorporated Ada County under the jurisdiction of Ada County and their ordinances and codes. When Star was incorporated in 1997 this property was included as part of the original City limits. Since the construction of the home FEMA has remapped the Boise River Floodplain two times, once in 2003 and once in 2020. Both times, Base Flood Elevations were adjusted along with the floodplain boundaries.

State, local and federal codes allow for the grandfathering of properties without requiring improvements to the property or structures at the time of the adoption of new maps. However, when these properties are improved, codes and ordinances require review of the new improvements for compliance with the current code. The request for the home addition has triggered this review. As noted, the new improvements do not meet the current floodplain code requirements, and as such the applicant has requested a variance to build the addition to lesser standards.

In 2014 FEMA published a Floodplain Management Bulletin titled "Variances and the National Flood Insurance Program" which I have taken additional time to review. You will find a copy of that document included with the council packet. I have highlighted several sections of this document but would like to provide a summary of some of the information.

- The variance is tied to the property, and not the individual and therefore “is not related to the individual personal circumstances of the applicant”
- “Common misinterpretations of this variance criterion include using it to justify variance requests related to person convenience, preferences, or aesthetics, e.g.”

FEMA is very clear that personal health and abilities should not be a factor when considering a variance. They support this stance by asking the question, what if the property sells soon? Now you have a non-compliant building that is not associated with the individual who requested the variance. There are several other statements throughout the document that continue the argument of not granting variance based on personal health. The variance process is in place for properties where site constraints make it impossible to comply with the Floodplain Ordinance.

Additionally, the document states “the variance criterion specifies that variances should generally be granted only for lots that are one-half acre or less; variances for lots of larger sizes must include significant technical justification.” This technical justification must include how it is not possible to retain stormwater on the site without the variance, or construction of the building or improvements would not be possible without a variance.

Also requested by the council were the possible consequences of granting this variance if FEMA finds out. First, this is not a matter of IF FEMA finds out, but WHEN. FEMA is required to conduct Community Assistance Visits (CAV) where they come, visit the jurisdiction, review records and tour the area. During the process they look for items that are not in compliance with local, state and federal codes. They make a list of these items and require the jurisdiction to bring these items into compliance. Historically these visits occurred every three to five years. The last visit for Star occurred in 2017/2018, so Star may be due for another CAV. However, due to COVID, limited travel by federal employees for several years, and current understaffing issues, these visits may occur less often. I do not know when our next CAV will be. Also note that as part of the variance process, we are required to notify the State Floodplain Coordinator of the request. They are aware of this request and have been watching it. They will likely notify FEMA of the proceeding’s outcome, and the council’s final decision.

What actions will FEMA take after reviewing variance request? First, they will review the application and see if they agree with the council’s decision. If they agree with the decision and determine the council is not issuing too many variances then nothing is likely to happen.

If they do not agree with the council’s decision, there are several things that might happen. FEMA could:

1. Call for a meeting with the city and explain their findings, recommend we reconsider, or issue no further variances.
2. Require the city to work with the property to bring the building into compliance. This would be limited to the individual property only.

3. Initiate the CAV process triggering a visit by FEMA which may result in several outcomes.

If a CAV is initiated FEMA will visit the city as indicated above. After the visit FEMA will provide the city with a report on their findings, including any violations or concerns they find. The City will then be required to resolve all issue/concerns FEMA finds. One of the actions FEMA could do is require the City to bring this property into compliance with the City ordinance, along with other properties they identify. It would then be up to the City to work with the property owner to bring this property into compliance. Having seen the process before there are several options the city can do:

- Condemn or purchase the property, tear down the structure, and then sell the property or utilize it for the City.
- Force the property owner to bring it into compliance, this includes possible lawsuits or other negotiations. Because the City granted the variance it would be difficult force the issue or win any lawsuits.
- Pay the cost of bringing the building into compliance, which may include paying a contractor to raise the entire structure to meet the City ordinance.

4. Place the City on probation.

If FEMA fills the city is being unresponsive or is not working in good faith, they can then choose to place the city on probation or remove us from the NFIP. If the City is placed on probation every property in Star that has a current Flood Insurance policy will be charged an additional \$50 a year for their policy. If placed on probation and FEMA again feels we are being unresponsive they can then remove us from the NFIP.

5. Remove the City from the Nation Flood Insurance Program (NFIP).

If Star is removed from the NFIP, no property owner, residential or commercial will be able to purchase insurance from the NFIP. This means they cannot get the federal insurance rates and will likely pay five to ten time more for flood insurance, if they are able to find a policy at all. Most lenders require homeowners to have flood insurance if they live in a floodplain, and some require this if they live near the floodplain. If an existing homeowner that currently has a policy is removed from the property, the bank can force them to purchase this higher third-party policy's or foreclose on their property because they have defaulted on one of the loan requirements. Therefore, this decision may impact many residents of Star, not just the property in question.

During the August 20<sup>th</sup> council meeting there were several references to the 2017 flooding of the Boise River. While this event did cause some flooding and was considered by FEMA and others as a flood event, it was not the 0.1% chance (100 year) flood event. According to published reports the Boise River's Flood Stage is at 7,000 cubic feet per second (cfs) but the

0.1% flood event is based on 16,600 cfs. The 2017 flood event saw maximum flows of 9,600 cfs. Published reports indicate that flooding like the 2017 event have occurred 8 times in the last 50 years, including in 1984, the highest flow in the last 50 years. The following is a snippet from NOAA's website.

16000 - Major flooding will occur near the river in Boise, Garden City, Eagle, Star, and Caldwell. Some residential areas in low lying areas near the river will be flooded with water entering some houses. A flood of this magnitude has not occurred on the Boise River since 1943. Most of the area within the 100 year flood plain, including many city parks near the river, will be underwater. Debris piling up on bridge crossings will cause additional flood damage.

In conclusion, I am sympathetic to the applicant's request for a variance, however as the City's Floodplain Manager I need to balance the request of the applicant with the overall impact to the city, its other residents, and the requirements of the code. Per FEMA's guidelines this variance request does not meet their standards. In my professional opinion, granting this variance will likely trigger a review of the City's floodplain ordinances, policy, and development. FEMA will likely require the city to remedy the non-compliant building addition, which could include the city paying for the elevation of the structure. Should the City elect not to work with FEMA on this property, and any other items they may find, additional sanctions and penalties could be imposed, up to and including being removed from the National Flood Insurance Program.

If the variance is approved, the applicant should be notified that building the home addition at the lower elevation could increase their flood insurance by as much as 25% to 30%. They also need to be aware that the NFIP caps the limit of flood insurance at \$250,000 for building improvements, with an additional \$100,000 for furnishings. The total insured amount would probably be less than the total cost of damage during a major flooding event. Additionally, this variance is only for the finished floor of the building. All duct work and non-water-resistant materials (insulation, etc.) must be elevated above the Base Flood Elevation, and all other aspects of the Floodplain Ordinance must be complied with.