



**Board of Adjustment
Zoning Variance
Staff Report & Findings**

TO: City of Asheville Board of Adjustment **DATE:** March 14, 2016

FROM: McCray Coates, PE – Stormwater Administrator
Shannon Tuch, RLA - Zoning Administrator

PREPARED BY: Nancy Watford, RLA, LEED AP
Stormwater Plans Reviewer

SITE INFO: Tax Description (PIN#): 9638-96-7846-00000
Street Address: 14 Riverside Dr.
Zoning: RIVER
Property Owner: City of Asheville

Summary Statement:

The petitioner, the City of Asheville, is requesting relief from the flood protection standards (Sec. 7-12-1), detailed in the **City of Asheville - Unified Development Ordinance (UDO)**. The purpose of the request is to allow for the rehabilitation of the historic structure located at 14 Riverside Dr. (Exhibit B) without fully complying with the flood protection standards in order to preserve the structure and its historic character.

Variance Request:

	UDO Requirement	Applicant Request	Variance
Flood Protection	UDO Sec. 7-12-1(e)(2)(e)(1)(ii). A substantial improvement: Both the existing structure and /or improvement must comply with the standards for new construction.	To comply to the maximum extent possible	N/A

Review:

Special consideration for historic structures is described in the flood protection standards in UDO subsection 7-12-1(f)(1)(a). Specifically, this subsection states:

(f) Variances.

(1) Petition for a variance. Any aggrieved person may petition for a variance to the board of adjustment for the following:

- 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.

The existing historic building sits within a 0.29 acre parcel, however, the total project area includes the subject property (PIN: 9638-96-7846) and an adjacent 2.55 acre parcel (PIN: 9638-96-5969). Both parcels are located entirely within designated flood hazard areas and are subject to the city’s flood protection standards. The variance request is limited to the renovation of the building only and all site work that will occur on the second parcel is designed to meet all floodplain development requirements set forth in the UDO.

The subject building was constructed in 1933 and is included in the US Department of Interior, National Park Service, National Register of Historic Places, as a contributing structure to the Riverside Industrial District in Buncombe County, North Carolina (Exhibit C - #11 Storage Warehouse). The building at 14 Riverside Dr. has been vacant for an extended period of time and to re-occupy this building will require a *substantial improvement* as defined by the UDO:

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure before the start of construction of the improvement. [. . .]

Per UDO requirement 7-12-1(e)(2)(e)(1)(ii) all renovations that involve a substantial improvement must comply with the flood protection requirements. The current value of the building is \$16,200 based on the Buncombe County Tax Assessment, which would limit the 50% substantial improvement value to \$8,100. The current estimate for improvement costs (minus some permissible exclusions) is \$367,589.

The Federal Emergency Management Agency (FEMA) has issued guidance for historic structures in the National Flood Insurance Program (NFIP) Floodplain Management Bulletin – Historic Structures (FEMA P-467-2, May 2008). This bulletin explains that historic structures do not have to meet floodplain management requirements of the program as long as they maintain their historic structure designation and can demonstrate that proposed renovations are designed to minimize damage from flooding and potential harm to the public. As an alternative to this exemption, cities may choose to adopt a more rigorous variance approval process that would require compliance with a number of special conditions resulting in a higher standard that would make the building more flood resistant and minimize damages, provided those conditions did not affect the historic character and design of the building. Asheville chose to utilize the variance process to ensure the highest level of compliance possible.

Other Considerations:

- The regulated base flood elevation for this building is set at 1985.7 feet (two feet above the recorded base flood elevation on FEMA map #3700963800J, Panel 9638). The proposed final floor elevation of the building will be 1976.6 feet which is over nine feet below the required elevation.
- The proposed electrical work will be designed to meet all flood plain development standards by elevating all equipment 2-feet above base flood elevation and using Ground Fault Circuit Interrupters (GFCI) to protect the wiring from moisture and the public from shock.
- A back flow preventer will be installed as a flood protection mechanism, to prevent back flow from the sewer line, in the event of a flood and a majority of the material utilized in the renovation is flood resistant, the only exception is the use of drywall in the bathrooms.
- Renovations to the building are modest and necessary to bring the historic to a condition suitable for occupancy. The final project will provide public restrooms, flex space and will serve as an informational center for the River Arts District.

Process for Granting a Flood Variance:

To grant a variance to the flood protection standards in the City of Asheville requires that four steps are followed and satisfied. These steps are as follows:

Step 1 – Prerequisites. The first step requires that the flood plain administrator conclude that the application meets a number of pre-requisites to be eligible for consideration of a variance. Per Sec. 7-12-1(f)(2) the Board shall be provided a written report from the administrator specifying whether all technical evaluations, relevant factors and standards in this section have been met. Those pre-requisite standards and the Administrator's response are included as an attachment to this report as Exhibit A.

Step 2 – Special Requirements. Once the pre-requisites are satisfied, the second step is for the applicant to demonstrate that the project meets the seven special requirements referenced in UDO Sec. 7-12-1(f)(3). These standards are as follows and are included as part of the application:

- a. The variance is the minimum necessary, considering the flood hazard, to afford relief.

- b. No development permit has been approved.
- c. A showing of good and sufficient cause.
- d. Failure to grant the variance would result in exceptional hardship.
- e. 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.
- f. The granting of the variances will not make the structure in violation of other federal, state, or local laws, regulations, or ordinances; and
- g. The granting of the variance is within the designated floodway or non-encroachment area and will not result in any increase in flood levels during the base flood discharge.

Step 3 – Standard of Review for Flood Variances. The third step is for the applicant to demonstrate that the project meets the special Standard of Review for flood regulation variances included in UDO Sec. 7-6-2(f). Those standards are as follows and have been included as part of the application:

- 1) The property on which the structure is to be erected is an isolated lot of one-half acre or less, contiguous to and surrounded by existing structures constructed below such required first floor elevation.
- 2) Good and sufficient cause exists for the granting of the variance.
- 3) Failure to grant the variance would result in exceptional hardship to the applicant.
- 4) The issuance of the variance would not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
- 5) The variance is the minimum necessary to afford relief.
- 6) The variance would not have the effect of nullifying the intent and purposes of this chapter.

Step 4 – Findings of Fact. The fourth and final step before granting a flood variance, as is consistent with the granting of all other variances, is that the applicant must demonstrate that certain findings of fact can be made. These findings are found in the NC General Statutes and are repeated in UDO Sec. 7-6-1(e). These findings are as follows and are included in the applicant's application:

- 1. Unnecessary hardship would result from the strict application of the ordinance.
- 2. The hardship results from the conditions that are peculiar to the property, such as location, size, or topography.
- 3. The hardship did not result from actions taken by the applicant or the property owner.
- 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Attachments:

- Exhibit A – Report from Floodplain Administrator
- Exhibit B – Aerial Map

Exhibit C – National Register of Historic Places,
Riverside Industrial District