

STAFF REPORT

September 6, 2001

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**No. 01SE001 - Special Exception to the Flood Area Construction Regulations to allow permanent structures in the floodway**      **ITEM 28**

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GENERAL INFORMATION:

PETITIONER	Bill Caldwell
REQUEST	<b>No. 01SE001 - Special Exception to the Flood Area Construction Regulations to allow permanent structures in the floodway</b>
LEGAL DESCRIPTION	Tract 5, Bradsky Subdivision No. 2, located in the NW1/4 SW1/4 Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 1 Acre
LOCATION	1316 Cambell Street
EXISTING ZONING	General Commercial District
SURROUNDING ZONING	
North:	Flood Hazard District
South:	Flood Hazard District/General Commercial Disrict
East:	Flood Hazard District
West:	Flood Hazard District
PUBLIC UTILITIES	City water and sewer
REPORT BY	Randy Nelson

RECOMMENDATION: Staff recommends that the Special Exception to the Flood Area Construction Regulations to allow an addition to an existing nonconforming structure and the use of the premises for a used car lot in the floodway be denied.

GENERAL COMMENTS:

1. Applicant's request:

The applicant is making a request for a special exception to the Flood Area Construction Regulations. The property involved is located in the Flood Hazard District also known as the Floodway.

The reason for the request is that a standard floodplain development permit cannot be issued for this property due to the ordinance restrictions, specifically the proposal exceeds the expansion of a non-conforming use of 50% of the value clause (see Ord. 15.32.250(B)) and the use of the property (car storage 24 hours a day 7 days a week in the floodway) is a non-conforming use.

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The scope of the variance request includes an approximate 100% expansion of the existing building which is much more than the allowable 50% using 1977 value. Also the granting of this exception will end up allowing vehicle storage on site which is not allowed by ordinance.

2. Background:

The original structure on the property was built outside the corporate limits in December 1976. At that time the County had not adopted floodplain regulations.

The property was annexed into the City in June 1977 and in October 1977 zoned into the Floodway zoning district. Subsequently the area has been renamed the Flood Hazard Zoning District.

At the time of annexation the property was owned by Rex J. Perrigo and Walter Bradsky. No use information was identified at that time.

In 1978 a building permit was issued for an interior alteration for a restaurant. It is not clear if this was a change in use from the use of the property at the time of rezoning. Such a change in use would not be allowable per ordinance.

Permits were issued in 1980 for interior remodeling and signs for Sgt. Prestons Pizza.

In 1988 a sign permit was issued by Building inspection for "Auto Parts Pro". Assuming that the restaurant use was established prior to annexation and was a legally non-conforming use, the change of use to a retail use was a violation of the Zoning Ordinance.

In 1991, permits were issued to "Tile Setters" for a commercial remodel and sign.

In 1995, a sign permit was issued to "Select Auto". The location of a used car lot on the property constitutes another change in use in violation of the Zoning Ordinance. Also display of vehicles on the site is also a violation of the Flood Area Construction Regulations.

At the time of construction the first floor elevation was built to 3162.7 ft msl and the Regulatory Flood Elevation that would have been applicable at the time of annexation was 3163.4 ft msl. The building and parking area then was not built in compliance with the ordinance requirements, thus is by definition a "Nonconforming use".

Due to the recent revision to the Flood Insurance Rate Maps (FIRM) the RFE is now 3165.7 which means the existing and proposed building will be under three feet of water and the rest of the site will have deeper flows.

Per Ordinance 15.32.250(B) Nonconforming uses, no structural alteration, addition or repair to any "Nonconforming structure over the life of the structure shall exceed fifty percent of its value at the time of its becoming a nonconforming use (1977 value), unless

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the structure is permanently changed to a conforming use. The petitioner has proposed and addition the same approximate size as the existing building and the value is anticipated to exceed the 1977 value many times over.

The purpose of this ordinance in these areas is to eliminate these uses from the highest hazard areas of the floodplain, not expand them.

3. Factors to be Considered per Ordinance:

Per Ordinance 15.32.240 (D) the Planning Commission and Council are required to consider certain factors when acting upon applications for Special Exceptions to the Flood Area Construction Regulations. With the application for a special exception the applicant has included information to address these factors. Listed below are each of the factors as contained in ordinance followed by staff's comments.

*D. Factors Upon Which the Decision of the Commission or Common Council Shall be Based. In passing upon such applications, the commission and council shall consider all relevant factors specified in other sections of this chapter and:*

1. *The danger to health, safety, welfare and property due to increased flood heights or velocities caused by encroachments.*

The consultant has provided a "No-Rise Certification" and Floodproofing proposal for the proposed expansion. It should be noted that this "No-Rise Certification" is not a difficult design to accomplish in this type of situation and the Floodproofing proposed is a common engineering practice.

2. *The danger that materials may be swept onto other lands or downstream to the injury of any person or property;*

The consultant has admitted in his statement (to staff's agreement) that there is a substantial increase in risk to persons and property due to the increased risk of automobiles being carried downstream.

The main issue that needs consideration here is what is going to happen when these cars float downstream and plug the next couple of bridges at Creek Dr. and St. Patrick St. and alter the watercourse. It is anticipated that the flooding limits will change relative to where they are shown on our current floodplain maps and other areas not anticipating flooding will be damaged. Most property owners outside the Flood Hazard Area do not carry flood insurance and if they are damaged they will have no relief.

3. *The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;*

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The consultant has prepared floodproofing safeguards in a proposal format. Many details are left to be addressed at the Building Permit application process. Staff is not providing comment at this time.

4. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual occupant, both present and future;*

This site is susceptible to damage now and after the proposed addition as well as having a high potential for auto bodies floating downstream.

5. *The importance of the services provided by the proposed facility to the community;*

Not allowing this exception does not change Mr. Caldwell's business.

6. *The requirements of the facility for a waterfront location;*

This business does not require a waterfront location.

7. *The availability of alternative locations not subject to flooding for the proposed use;*

The consultant has made a broad statement in that no other locations exist not subject to flooding. It is stated that relocation costs are higher than expansion. The question that needs to be asked here is what is the cost to the public if cars are washed downstream and plug the next two bridges.

8. *The compatibility of the proposed use with existing anticipated, or other proposed developments in the foreseeable future;*

This use is not compatible with any floodway uses.

9. *The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;*

This proposed use is contrary to the purpose of the City's floodplain management policy to eliminate uses in the high hazard areas of the City's floodplain.

10. *The safety of access to the property in times of flood for ordinary and emergency vehicles;*

Since Cambell St. will not be accessible during a flood this site will not be accessible.

11. *The expected heights, velocity, duration, rate of rise and sediment transportation of the floodwaters expected at the site;*

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To summarize the consultant's information for this item, this is an area of high flood velocities, deep flows, and debris impacting properties. Persons and property are at an increased risk to damage and loss of life at this site.

*12. Such other factors which are relevant to the purpose of this chapter.*

4. Summary:

Staff feels that the nature and degree of risk resulting from this proposed expansion in use is significant. As vividly demonstrated in 1972, cars float downstream, jamming under bridges, resulting in increased flood levels and expanded flood areas.

This request constitutes the rebuilding in the floodway, thus ignoring the lessons of 1972. The expansion of this building for the purpose of expanding business volume will lead to an increase in the number of vehicles stored on site in the floodway. The added investment in the structure adds to the permanency of the non-conforming use, reducing the likelihood of achieving the goals of the ordinance.

The consequences of granting this exception include an increased risk to life and property as a result of vehicles plugging bridges. Granting of variance to such a major non-conformance set precedence for granting numerous lesser variances, which will have a significant cumulative impact.