



**MEETING OF MAY 2, 2023**

**TO:** Mayor Jordan and City Council

**THRU:** Susan Norton, Chief of Staff  
Chris Brown, Public Works Director  
Jonathan Curth, Development Services Director

**FROM:** Jessica Masters, Development Review Manager  
Alan Pugh, Staff Engineer

**DATE:**

**SUBJECT:** **Appeal: LSD-2022-0041: Large Scale Development (N. HWY 112/112 ARONSON, 209): Submitted by ENGINEERING SERVICES INC. for property located on N. HWY. 112. The property is zoned C-2, THOROUGHFARE COMMERCIAL and UT, URBAN THOROUGHFARE and contains approximately 31.20 acres. The request is for a development with 214 residential units, 40,000 sq. ft. movie theater, and associated parking.**

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**RECOMMENDATION:**

City staff made no recommendation and Planning Commission approved of a request for a variance to UDC §168.10(U), Provisions for Flood Hazard Reduction at the March 27, 2023 Planning Commission meeting. This variance was requested in association with a large-scale development proposal to construct 214 residential units, 40,000 sq. ft. movie theater, and associated parking.

**BACKGROUND:**

The subject property is the former site of the 112 Drive-In in north Fayetteville, southeast of the intersection of Highway 112 and Van Asche Drive. The property is zoned UT, Urban Thoroughfare, and C-2, Thoroughfare Commercial, and it received this zoning classification in 2022. The site is partially located within a FEMA floodplain, contains a protected stream and hydric soils, and is sparsely vegetated. Portions of the property are also located within the current boundary of the Enduring Green Network and the I-540 Overlay District.

*Request:* The applicant requests Large Scale Development approval of 214 residential units, three commercial buildings, including a movie theater, and associated parking. The applicant requested 5 variances to the Unified Development Code, all of which were approved by the Planning Commission. Under consideration with this appeal is the Planning Commission's determination of a variance to §168.10(U): Provisions for Flood Hazard Reduction. The applicant has requested a variance for the development to increase flood height in a special flood hazard area. In their letter the applicant says the development will increase the Base Flood Elevation by 1.56 inches at a point just upstream of where Clabber Creek crosses under Highway 112. The decision to approve the variance by the Planning Commission is being appealed by the adjacent property owner.

*Public Comment:* Staff received public comment on the overall development prior to Planning Commission and

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Mailing address:

113 W. Mountain Street  
Fayetteville, AR 72701

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at the meetings. While most public comments were general inquiries about the proposal, the neighboring property owner issued concerns about a variance that was requested for cross access, and later issued concerns about the flooding and drainage information that was provided by the applicant.

**DISCUSSION:**

At the March 27, 2023 Planning Commission meeting, a motion to approve LSD-2022-0041 in favor of all requested variances and all other conditions as recommended by staff passed with a vote of 7-2-0 (Commissioners Winston and Brink voted no).

The variance approved by the Planning Commission and being appealed to City Council involves a request by the applicant to increase the base flood elevation approximately 1.56 inches at a point just upstream of where Clabber Creek crosses under Highway 112. There are two properties impacted by this increase, the property owned by the applicant and the adjacent property owned by Nelms LLLP commonly referred to as the Fayetteville Autopark.

The applicant provided a flood study for the existing condition as well as the proposed condition to determine the extent of any impact to the floodplain including any increase in base flood elevation or channel velocity as required by the Flood Damage Prevention portion of the UDC.

While weighing the potential impacts of this request, staff did investigate and determine that based on the information provided by the applicant the proposed increase would not subject any structures to additional flooding. However, a portion of an existing parking area within the Fayetteville Autopark is subject to flooding of approximately one foot during larger storm events. Based on the proposed increase of 1.5 inches and using GIS topography, it was determined that the floodplain could extend 8-10 feet further into the Fayetteville Autopark's existing parking area and increase in depth an additional 1.56 inches according to the applicant's study.

However, of note is that ArDOT is currently planning improvements to Hwy 112 which would increase the capacity of the culverts under Hwy 112 at this location. According to the applicant's engineer, the proposed improvements to Hwy 112 would return the floodplain elevations so that they would be at or below the conditions found today. Staff was unable to make a recommendation on the request largely in part due to the uncertainty of the timing of these improvements and the impact to the adjacent property owner until these improvements are completed.

**BUDGET/STAFF IMPACT:**

N/A

**ATTACHMENTS:** Appeal Letter, City Council Sponsor, Exhibit A - HWY 112 Floodplain, Exhibit B - FEMA Preliminary Map, Planning Commission Staff Report

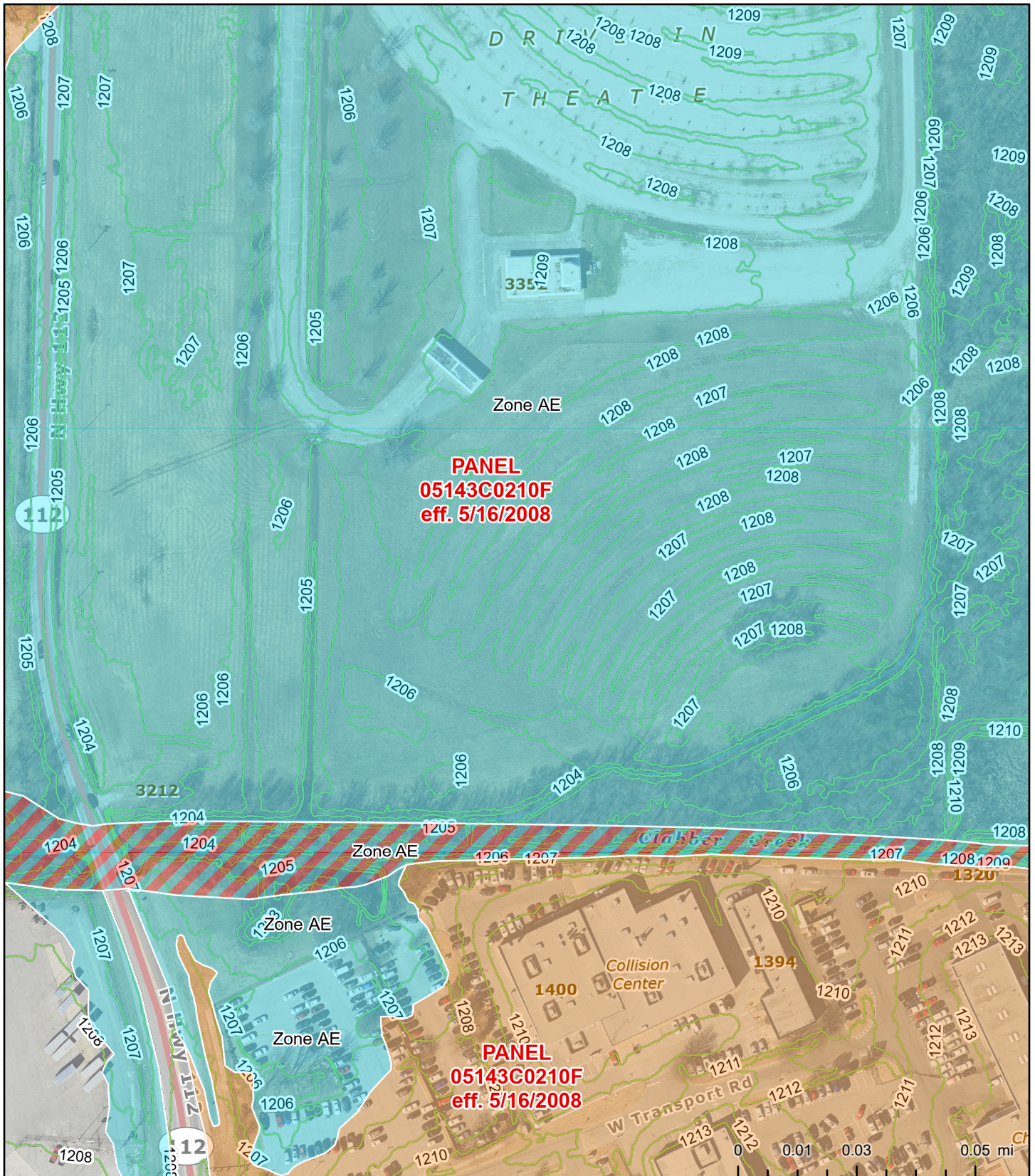
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- 1% Annual Chance Flood Hazard
- Regulatory Floodway
- Special Floodway
- Area of Undetermined Flood Hazard
- 0.2% Annual Chance Flood Hazard
- Future Conditions 1% Annual Chance Flood Hazard

## Highway 112 Floodplain

Fayetteville, AR

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 Map Author:







## Masters, Jessica

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**From:** Bunch, Sarah  
**Sent:** Wednesday, April 5, 2023 10:15 AM  
**To:** David Nelms  
**Cc:** Masters, Jessica; Pennington, Blake; Brown, Chris  
**Subject:** Re: Appeal - Planning Commission LSD-2022-0041

David,

Yes, I will sponsor your appeal. I cannot guarantee I will vote in favor of the appeal because I like to hear all the evidence first then decide, but I will most definitely help you get this before the council.

I am responding to everyone you included, and hope the City Attorney will advise me if this is sufficient to do place it on the council agenda.

Sarah Bunch

Sent from my iPhone

On Apr 5, 2023, at 10:01 AM, David Nelms <daviddnelms@gmail.com> wrote:

**CAUTION:** This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sarah,

I am writing to ask you to sponsor our appeal to the Planning Commission's approval of the Aronson project, LSD-2022-0041. The specific purpose of our appeal is to challenge the approval of a variance to **§168.10(U), Provisions for Flood Hazard Reduction**.

The project is in a special flood hazard area and the flood models indicate an increase in the base flood levels which necessitated the variance. The applicant's engineers assert the project meets all other requirements of **§168.10** including that for compensatory storage. The applicant claims the adverse impact on flood levels will be remedied when improvements are made to Highway 112.

The City engineers have yet to verify the applicant's storage calculations and made no recommendation to the Planning Commission on the variance request stating that the timeline for ARDOT's future improvements is

unknown.

As laid out in section **§168.01(A)** of the unified code, the planning commission has a responsibility to minimize public and private losses due to floodplain development. Yet in this case, they accepted the assumptions made by the applicant as fact, and rather than seeking clarification they granted the variance potentially leaving the Auto Park more vulnerable to flooding for an undetermined amount of time.

We understand that the project will be scrutinized by the engineering department prior to the issuance of a grading permit; however, an appeal will help provide peace of mind and adequate time to assure all requirements of the **Flood Damage Prevention Code** have been met.

Additionally, we have hired engineers to perform an independent review of the boundary conditions and flood models.

Thank you for your time and consideration in sponsoring our appeal.

Sincerely,

David Nelms

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David D Nelms

Nelms LLLP

(479) 527-7812