

## ARTICLE IX

### WAIVER OF THE SUBDIVISION REGULATIONS

#### **900**            **Purpose**

In connection with approval of a Preliminary Plan or Record Plat, the Planning Commission may waive any non-dimensional requirement of these regulations not specifically excluded from this procedure. A request for relief from the dimensional requirements of this Chapter is deemed to be a variance and subject to review by the Board of Adjustment or by the Planning Commission.

#### **910**            **Procedural Requirements**

Submittal of Request for Waiver - The applicant shall submit, with the appropriate application for a plan approval, a request for waiver of the applicable subdivision standards. The request shall state the waiver being requested, and the reasons for the waiver in terms of the standards set forth in this regulation.

#### **920**            **Review**

Review of the Request - The request for modifications shall be reviewed and acted upon by the Technical Review Committee. The applicant may appeal a denial of the application to the Planning Commission.

##### A.            General Standards

No waiver may be granted under these regulations unless:

1.            The waiver is consistent with the stated purpose and intent of this Chapter and with the adopted Comprehensive Plan.
2.            The waiver would not have a significantly adverse impact on the public interest; and
3.            The waiver would not overburden or otherwise adversely impact public facilities.

##### B.            Specific Standards.

No waiver may be granted unless the applicant clearly shows the existence of one or more of the following circumstances:

1.            Superior Alternatives - Where the proposed waiver will provide an alternative that will achieve the purposes of the requirement through clearly superior design, efficiency, or performance.
2.            Protection of Significant Features - Where the waiver is necessary to preserve or enhance significant existing environmental or cultural features, such as trees, scenic areas, historic sites or public facilities, related to the development site.
3.            Deprivation of Reasonable Use - Where the strict application of the requirement would effectively deprive the applicant of all reasonable use of the land to be subdivided, due to its unusual size, shape, topography, natural conditions, or location; provided,
  - a.            Such effect upon the owner is not outweighed by a valid public purpose in imposing the requirement in a specific case, and
  - b.            The unusual conditions involved are not personal to, nor the result of actions of the developer or property owner, which occurred after the effective date of these regulations.

4. Technical Impracticality - Where strict application of the requirement would be technically impractical in terms of engineering, design, or construction practices, due to the unusual size, shape, topography, natural conditions, or location of the land or due to improved efficiency, performance, safety, or construction practices which will be realized by deferral of the installation of required improvements; provided,
  - a. The development will provide an alternative adequate to achieve the purposes of the requirement, including performance guarantee for the current construction cost, adjusted for inflation, of any required improvements which may be deferred; and,
  - b. Any unusual conditions creating the impracticality are not personal to, nor the result of the actions of the developer or property owner that occurred after the effective date of these regulations.
5. No Relationship to the Development or its Impacts - Where all or any part of the requirements have no relationship to the needs of the development, or to the impact of the development on the public facilities, land use, traffic, public safety or environment of the neighborhood and the general community, due to the location, scale, or type of development involved; provided that any specific modification requirements set forth in these regulations are met.
6. Planned Developments - Where the waiver is consistent with an approved Development Plan for a Planned Development.

**930 Planning Commission May Establish Alternative Conditions or Requirements**

Reasonable conditions and additional or alternative requirements, including but not limited to those relating to the provision of adequate security to assure compliance, the dedication or reservation of land, or the provision of funds in lieu of installation of improvements or dedication or reservation of land, may be imposed in connection with the approval of any waiver of any requirements under this Section.