

**General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

**1. Will the waiver adversely affect adjacent property owners?**

The waive will not adversely affect the adjacent property owners since the affected area lies adjacent to the Hurstbourne Parkway frontage only and especially since additional right of way is dedicated along the sites frontage with a minimum distance of 129' and a 50' parkway buffer will be provided. Hurstbourne Parkway is classified as a primary arterial level road requiring a minimum right of way of 130 feet but likely due to the bridge for the stream crossing of Fern Creek there is about double the typical right of way width provided along the sites frontage. This additional setback would more than offset the waiver request.

**2. Will the waiver violate the Comprehensive Plan?**

The waiver will not violate the Comprehensive Plan since in regard to the Community Form Plan Element the apartment building as shown with the waiver is located further back from the road than along a standard stretch of this road and is similar in character, and as a multi-family development it brings a mix of housing not found in the immediate area. The plan addresses the Livability Plan Element with the preservation of the stream buffer, tree canopy and floodplain and with the provision of a dog park and walking path for the benefit of the residents

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

Since the development of the site is already limited by the stream corridor and its required setbacks, the steep slopes, floodplain, as well as, impacted with the larger existing right of way, the waiver is the minimum necessary to make the development of the property feasible.

**4. Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship given the existing larger right of way that results in further setback from the road and since the applicant is preserving open space on the site that is more than 4 times the requirement which will benefit the community, as well as, this development.

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