

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.

Waiver of **Section 5.7.1.B.3** to reduce the landscape buffer within the transition zone along the west and a portion of the south property lines.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because it is substantially the same as the waiver filed in this case for Table 10.2.3 to allow an encroachment of the existing parking lot and drive aisle into the LBA along the south-west property line (excluding the cemetery as not being a residential use). Both of these waivers are for an existing condition with the parking lot and drive aisle already existing for the current gaming facility operating under a conditional use permit. With the rezoning, the additional landscape buffer area is required by virtue of the rezoning, but not a change in use for the existing condition. Further, the applicant has already installed an 8' wood fence along this property line buffering the adjoining use. The first residential homes along Cavelle Avenue are right where the proposed parking lot ends. A portion of the southwest property line of the subject site adjoins a cemetery located in a R-1 zoning district and presumably LDC 5.7.1.B.3 does not apply.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of Plan 2040 filed with the rezoning application and the waiver will not violate the Comprehensive Plan because there are no new potential impacts to be mitigated by this request.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is an existing condition with no additional impacts created because the parking lot and the drive lane are not being changed or altered. Further, the applicant has already implemented the construction of fencing for mitigation along this property line.
4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would require the removal of the existing drive aisle due only to a change in zoning for a hotel addition on the other side of the building.