

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 waiver will not adversely affect the adjacent property owners since it is a typical occurrence for sewer and drainage easements to be located in the rear yard, since this does not reduce the depth of the yard or negatively impact the lot. These easements are often requested by MSD to be located along the rear property line to provide a ditch within it that will keep any increase in runoff from this development to negatively impacting the adjacent properties. The ditch/easement is required to protect the adjacent properties.

2. Will the waiver violate the Comprehensive Plan?

The waiver will not violate the Comprehensive Plan since adequate drainage facilities to serve the development are required and will be provided, since this will not affect the developers ability to provide buffering, if required, nor affect any other aspect of this developments compliance with either the Plan 2040 or the requirements of the Land Development Code.

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

The waiver is the minimum necessary to afford relief to the applicant to allow for the best design of the individual lots. It has been generally accepted that drainage easements be located in the rear yard either along the rear property line or offset from this typically to preserved existing vegetation. Without the waiver the applicant would be required to locate the drainage way away from the rear property line and therefore in close proximity to the home. It would reduce the usable area close to the home that would otherwise be used by the homeowner as their private yard, an area typically reserved for use by the homeowner for outdoor dining, entertainment, relaxation and/or recreation.

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 provision of the regulation would deprive the applicant of the reasonable use of the land as locating the drainage easement in the rear yard has been the preferred and acceptable practice. Requiring the easement to be located away from the rear property line creates an unnecessary hardship for the developer and ultimately the homeowner in reducing the usable area of the private yard with a ditch separating the area adjacent to the home from the rear yard and negatively impacting the resulting buildable lots.

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1. Will the waiver adversely affect adjacent property owners?

The waiver will not adversely affect the adjacent property owners since both adjacent lot 64 and 75 are under the same ownership and have existing access with a driveway off S. English Station Road. A stub street is not required to lot 64 as it is not vacant, has an existing residence with access to English Station Road. Lot 75 is a 4 acre parcel that is not developed but like lot 64 contains a pond and steep slopes many of which are >20 and some even >30%. The existing conditions limit the development potential of the lots. Should the lots be subdivided in the future the existing driveway could be extended to provide an access easement and serve the development.

2. Will the waiver violate the Comprehensive Plan?

The waiver will not violate the Comprehensive Plan since the adjacent lots are under the same ownership and have existing access off S. English Station Road. Also the provision of a stub street would affect steep slopes on the site under consideration where the intent is to preserve the steep slopes and if the stub was directly to lot 75 would require a stream crossing all of which would be at a significant cost to the environment and the developer.

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

The waiver is the minimum necessary to afford relief to the applicant since the existing lots combined are only 7 acres of land with many steep slopes, 2 ponds and difficult to develop.

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 provision of the regulation would require a stub street be provided to from the site to the adjacent lot 75 would entail impact to existing steep slopes on the site of both greater than 20% and 30% and the crossing of an intermittent stream. The goal of this development was to preserve the steep slopes and in return provide a transfer of the development potential of the site. Providing the stub street as strictly required to the adjacent lot 75 would deprive the applicant of the reasonable use of the land.