



**Land Development Services and
Department of Planning and Zoning**

Technical Bulletin

Subject: Waivers and Modifications Appropriate for Review During Entitlement vs. Site Plan/Subdivision Review **Date: June 19, 2019** **No.: 19-08**

Summary: This letter provides guidelines for requesting waivers or modifications of certain site plan and subdivision ordinance and Public Facilities Manual (PFM) requirements with a rezoning or special exception application (i.e., during entitlement phase). This Letter to Industry (LTI) supersedes and replaces LTI-02-05.

Effective Date: This does not establish a new policy but clarifies existing practices; therefore, it is already effective.

Background: Pursuant to Sect. 17-201 of the Zoning Ordinance and Section 101-2-2 of the Code of the County of Fairfax, Virginia, the Director of Land Development Services (LDS) and the County Executive, respectively, are given the authority to grant waivers of certain site plan and subdivision ordinance requirements. PFM Section 1-0100.8 gives the Director authority to approve a waiver or variation to the PFM where the effect of the variation is in keeping with established engineering practice and procedure. In a memorandum dated July 1, 1998, the County Executive delegated the authority for granting waivers of subdivision requirements to the Director of the Department of Public Works and Environmental Services (DPWES) or the Director's designee. This authority is now delegated to LDS.

With the approval of a rezoning or special exception application (the entitlement phase), the Board of Supervisors (the Board) may choose to approve certain types of Zoning Ordinance or PFM waivers or modifications. When this occurs, a waiver application is not required with the site or subdivision plan. Absent specific action by the Board, the applicant may be required to submit a separate waiver request to the Director during the site or subdivision process.

Two misconceptions are often encountered related to this process:

1. Applicants often think that if a development plan is approved with a layout or feature that does not meet a particular Zoning Ordinance or PFM requirement, the applicant is automatically relieved of the requirement. This misunderstanding may lead to delays in the process if the need for waiver submissions is not identified until the site or subdivision plan is under review by LDS staff.
2. The entitlement phase provides the opportunity to obtain approvals of waivers and modifications that are needed for the project. However, not all waivers and modifications are appropriate for review during the entitlement phase. Those that are requested must be accompanied by the same level of detail and justification as would be included if submitted during site plan/subdivision review.

The guidelines below are intended to help address these issues and minimize the chance of delays associated with waivers and modifications.

Guidelines:**Waivers/Modifications during entitlement**

In general, waivers and modifications requested during the entitlement phase should be limited to elements that would directly affect the site layout or specific commitments made on the Conceptual Development Plan (CDP), Final Development Plan (FDP), Generalized Development Plan (GDP) or Special Exception (SE) Plat. Processing these waivers during the entitlement phase minimizes the chance that the applicant will need to revise the layout during site plan or subdivision review. When requesting the waiver or modification, the applicant must cite the specific Zoning Ordinance or PFM section from which they want a modification/waiver and provide a justification.

Waivers/modifications appropriate to process during the entitlement phase may include the following:

- Sect. 2-505: Corner Lots: *The Zoning Ordinance provides specific requirements to be submitted in order for the Board of Supervisors to review this waiver.*
- Sect. 6-107, 6-207, 6-306 and 6-407: Privacy Yards
- Sect. 11-100: Off-Street Parking, Reduction: *This is a separate application with LDS that can be processed concurrently with the rezoning/special exception and requires a specific study.*
- Sect. 11-200: Off-Street Loading: *May include modifications to loading space numbers or location requirements.*
- Sect. 11-302: Private Streets, Waiver of the 600-foot private street length.
- Sect. 11-303: Private Streets, Waiver of the width standards referenced in the Public Facilities Manual.
- Sect. 13-200: Parking Lot Landscaping: *Interior and peripheral landscaping requirement modifications must be requested during the entitlement phase except that Section 13-202.5 specifies, "The Director may waive or modify the requirements of this section for any use in an I district wherein vehicles are parked or stored, provided the use is screened from view of all adjacent property or public streets." All other circumstances must be approved by the Board.*
- Sect. 13-300: Transitional Screening and Barrier: *The Zoning Ordinance provides specific standards for justification of the request.*
- Sect. 13-400: Tree Conservation: *This section references tree conservation standards found in Chapter 122, which can only be approved by the Urban Forestry Management Division (UFMD) Director. Canopy and preservation deviations should be shown during the entitlement phase, and UFMD will provide preliminary feedback, but final review and approval will be handled at the time of site plan review.*
- Sect. 17-201: Right-of-way (ROW) Dedication: *The justification should include a depiction of Comprehensive Plan recommended right-of-way compared to proposed dedication.*
- Sect. 17-201: Interparcel Connection
- PFM Sect. 8-0201.3, Zoning Ordinance Sect.17-201, and Subdivision Ordinance Sect. 101-2-2(10): Trails or Walkways shown on the Comprehensive Plan
- PFM Sect. 12-0310.4E(9)(a), (b) and (c): Planting Width
- Modifications to Additional Standards for Special Exceptions

Waivers required from the Virginia Department of Transportation (VDOT) should be obtained at least six to eight weeks prior to Planning Commission review. The development plans should provide alternatives in case the waiver is not approved. Failure to do so may result in the need for a zoning amendment if the VDOT waiver is not approved.

A list of waivers/modifications requested during the entitlement phase should be included on the development plan along with justification, including the items listed below under “Submittal Requirements.” This list of waiver/modifications should be submitted as a separate document (such as in the statement of justification). Staff may request that the applicant submit a [waiver form](https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/form_s/waiverrequestform.pdf) (https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/form_s/waiverrequestform.pdf) to document the justification. The requested waivers should also be consistent with any urban design guidelines that apply to the application. The Staff Coordinator will evaluate the list of waivers/modifications and their justification, in consultation with other agencies, and advise the applicant which waivers can be processed during the entitlement phase, as follows:

- If the request can be handled during the entitlement phase, staff will evaluate the request, request additional information if necessary, and provide a recommendation to be included in the staff report.
- If the request is not appropriate for review during the entitlement phase, staff will request the applicant to remove it from the list of requested waivers/modifications and direct them to apply for the waiver/modification at the time of site plan/subdivision review. Staff may provide preliminary feedback to the applicant, based on the limited information contained in the zoning application, regarding the likelihood that the waiver/modification could be approved at the time of site plan or subdivision review.

It is the Applicant’s responsibility to identify the waivers and modifications required at the time of zoning and submit adequate justification as described above. During the entitlement phase, it is not appropriate to request waivers of requirements which may potentially be needed at the time of a future site plan/subdivision review, unless such request is accompanied by the articulation of detailed alternatives and justification. Design elements shown on an approved FDP/CDP, GDP, or SE Plat may still require waiver/modification approval during site plan/subdivision review.

Waivers/Modifications during site plan/subdivision

Waivers and modifications that do not affect the site layout, and/or require more detailed design data to adequately evaluate, should be submitted at the time of site plan/subdivision review. It is appropriate to list these waivers on the development plan if it is clearly noted that the approval will be requested at the time of site plan. In most cases, the following types of waivers should be handled at site plan/subdivision review:

- PFM Chapter 6: Stormwater and Best Management Practices design
- Zoning Ordinance Par. 27 of Sect. 17-106: Tree canopy or preservation calculations
- PFM Sect. 7-802.2: Parking space geometric standards

Please note this is not an exhaustive list, and other waivers and modifications may be required at the time of site plan review.

Submittal Requirements:

Waivers and modifications submitted during the entitlement phase or during site plan/subdivision review should always include the following:

1. The type of waiver and Zoning Ordinance or PFM section.
2. Specific description of the proposed element for which the waiver/modification is being requested. Description should include location, limits, dimensions and other design details to enable the reviewer to fully evaluate the request. The request should also specify the difference between the standard in the referenced code or PFM section, and the proposal.
3. Justification for the waiver/modification.

If you have any questions, please contact the LDS Site Development and Inspections Division at **703-324-1720, TTY 711** or the Department of Planning and Zoning's Zoning Evaluations Division at **703-324-1290, TTY 711**.

Approved by: Bruce McGranahan, PE, Director
Site Development and Inspections Division
Department of Land Development Services
12055 Government Center Parkway, Suite 535
703-324-1720

Tracy Strunk, AICP, Director
Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
703-324-1290

Attachment[s]: None