

### **7.7.1302: CRITERIA FOR GRANTING WAIVER:**

A. Procedural Requirements: A waiver, which shall be requested prior to any subdivision request, may be granted when all of the following criteria are met:

1. Specific application of the procedural requirements makes strict enforcement an unreasonable burden upon the property and presents a difficulty unique to the development of that property given its circumstances. An assertion or showing that compliance increases cost of development does not satisfy this test;
2. The benefit to the public in waiving the requirement outweighs the harm to the property owner in strictly enforcing the requirement;
3. The intent and purpose of this part are implemented and waiver from any requirement may be reasonably calculated to substantially secure the objectives of this article and the Comprehensive Plan, as well as the requirement so waived.

B. Design Standards: Except for MU zone districts, a waiver, which shall be requested concurrently with any subdivision request, may be granted when criteria in subsections B1 through B4 of this section are met. In an MU zone district only, the following criteria in subsections B1, B4 and B5 of this section shall be met:

1. The waiver will not be detrimental to the public good or to surrounding properties;
2. There are exceptional topographic, soil or other surface conditions particular to the property, which are not ordinarily found in the general vicinity;
3. The strict application of the requirements of this part when applied to the property with its exceptional conditions prohibits the use of the property or its reasonable physical development when compared to the opportunity to use and develop similar properties in the general vicinity;
4. The waiver shall be consistent with the intent and purpose of this part, the Comprehensive Plan and State law.
5. As applied in the MU zone districts only, the applicant proposes alternative compliance to the strict application of the design standard in question, such that the alternative:
  - a. Achieves the intent of the subject design standard to the same or better degree than the subject standard;
  - b. Achieves the mixed use goals and policies in the Comprehensive Plan to the same or better degree than the subject standard, such as, but not limited to, a more compact development form; and
  - c. Results in equivalent or better benefits to the community as compliance with the subject design standard. (Ord. 96-44; Ord. 01-42; Ord. 03-157)