

12.04.160 Waiver/modification of the required right-of-way and transportation improvement standards.

A. Authority to Grant Waiver/Modification. The provisions of this section are intended to be a separate and distinct procedure from the zoning code variance procedures. Waivers and/or modifications of the standards of this chapter and/or the engineering design standards manual may be granted only upon meeting the criteria of subsection B of this section. Waivers may be initiated by the city or the developer pursuant to subsection D of this section, or by the public works director on his or her own initiative.

B. Criteria. The public works director may waive or modify applicable requirements contained in this title and/or the engineering design standards manual for paving, curb and gutter installation, storm drainage, design of structures and/or grading to future right-of-way grade, signs or other traffic control devices, landscaping, walkways, bikeways, sidewalks, on-street parking, driveways, surveys, engineering, street widening, cul-de-sacs/hammerheads, and/or utilities, when it is determined that the waiver or modification will not harm or will be beneficial to the public in general and that one or more of the following conditions are met:

1. Location in an environmentally sensitive area as determined by Chapter 19.05 PTMC, disruption of existing drainage patterns, or removal of natural features such as significant trees or vegetation makes widening and/or improving the street or right-of-way impractical or undesirable.
2. The existence of a structure such as a substantial retaining wall makes widening the street or right-of-way impractical or undesirable.
3. Widening and/or improving the street or right-of-way would eliminate street access to an existing lot.
4. Widening and/or improving the street or right-of-way would make building on a lot infeasible by reducing it to dimensions where; (1) development standards cannot reasonably be met; or (2) under which the property owner will have no reasonable use of the property.
5. One or more structures on the same side of the block as the proposed project are located in the area needed for future expansion of the street or right-of-way, and the structure(s)' condition and size make future widening of the remainder of the street or right-of-way unlikely.
6. Widening and/or improving the street or right-of-way is impractical because topography would preclude the use of the street for vehicular access to the lot (for example due to an inability to meet the required maximum driveway slope).
7. Widening, paving or street frontage improvements are unnecessary because (1) the street is adequate for current and potential pedestrian and vehicular traffic, for example, due to the limited number of lots served by the development, or (2) the development is on a street that is already developed at or near its zoned capacity and the improvements would provide little public benefit.
8. The specific design of the future street is currently unknown, making immediate improvement impractical and undesirable.
9. The installation of the required improvements would likely cause unacceptable significant adverse environmental impacts that may not be mitigated as determined by the SEPA official, and the waiver/modification would avoid such impacts.
10. There is insufficient street or right-of-way adjacent to the lot(s) and easement access cannot be obtained across private property.
11. There is no street or right-of-way adjacent to the lots and easement access can be obtained across private property.
12. In the case of engineered plans for street construction, when the public works department determines that engineering is unnecessary due to the limited extent of the improvements, where short or dead-end streets have

no foreseeable need to be joined to the city's existing street network at a future date, or where storm drainage concerns are not at issue or are a minor issue.

13. Application of the requirements of the engineering design standards manual as applied to a particular development would conflict with goals and policies of the Port Townsend Comprehensive Plan.

14. It is determined that development of the property will create impacts which can only be later mitigated through construction of an area-wide or neighborhood improvement and it would be unreasonable to require the full improvement as a condition of the development.

15. It is determined that the street frontage improvements required in the engineering design standards manual could best be accomplished by construction of area-wide improvements at a future date.

16. It is determined that requiring paving of an existing substandard street would be unreasonable because of the limited impacts caused by the proposed development.

17. It is determined that private streets or access easements can provide necessary vehicular access, including emergency vehicle access.

18. It is determined that emergency vehicle access is otherwise adequate.

C. Any waivers from the engineering requirement under this section do not exempt the developer from submitting plans which meet all other applicable specifications contained in the engineering design standards manual.

D. Application Requirements. The application for a waiver or modifications of the above listed standards shall be by written request to the city and shall be accompanied by a nonrefundable filing fee in the amount set forth by council resolution. The application shall be made on a form provided by the city. The application shall specify which requirement(s) of this chapter and the engineering design standards manual are at issue and which of the condition(s) listed above can be met. It shall also contain a statement as to why the deviation from the required standards is necessary and why the waiver or modification sought will not harm or will be beneficial to the general public.

E. Public Works Director's Decision. The public works director will make a decision in accordance with the permit review time period specified in PTMC 20.01.040 Table 2~~within 21 days of receipt of the application, subject to his or her notification to the applicant that additional time is needed to obtain further necessary information.~~ The public works director's decision shall be made in writing and shall be an administrative decision which may be appealed by the applicant only pursuant to Chapter 1.14 PTMC, upon payment of an appeal filing fee in the amount set forth by council resolution.

F. Authority to Condition. The public works director may, in his or her discretion, condition the granting of the modification or waiver on the property owner(s) signing of a no-protest agreement to future formation of an LID or RID, as further set forth in PTMC 12.04.140N. (Ord. 3051 § 1 (Exh. A), 2010; Ord. 2578 § 1, 1997).

12.04.170 Variances.

A. Authority to Grant Variance. The public works director shall have the authority, under limited circumstances, to grant a variance from the requirements of this chapter; provided, however, that all variances under PTMC Titles 17 and 18 shall be processed and decided under the requirements of those titles.

B. Application Requests. The person(s) seeking a variance shall prepare and submit an application to the city on forms provided by the city and accompanied by a filing fee in the amount set forth by council resolution. Upon receipt, the application shall first be reviewed for completeness. If the application is incomplete, the director shall promptly return it to the applicant and indicate the additional information needed to make the application complete.

C. Public Works Director's Decision. The public works director will make a decision in accordance with the permit review time period specified in PTMC 20.01.040 Table 2~~Within 30 days of receipt of a complete application, the public works director shall make a determination to grant the variance, grant the variance under certain delineated conditions, or to deny the variance.~~ The time for such determination may be continued to a later date as agreed to in writing by the applicant.

D. Criteria. A variance may be from all or part of the requirements of this chapter, may require other standards to be satisfied by the applicant, and may be subject to any conditions which the public works director deems necessary to carry out the purpose and intent of this title in the public interest, safety and welfare. In making his or her determination, the public works director may grant a variance only upon specific written findings of fact and conclusions showing that all of the following conditions exist:

1. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zoning district in which the subject property is located; and
2. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zoning district in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district in which the subject property is located; and
4. The special circumstances of the subject property make the strict enforcement of the provisions of this title an unnecessary hardship to the property owner; and
5. The special circumstances of the subject property are not the result of the actions of the applicant; and
6. The variance is the minimum necessary to fulfill the purpose and the need of the applicant; and
7. The variance is consistent with the purposes and intent of this title; and
8. The variance is consistent with the goals and policies of the Port Townsend Comprehensive Plan; and
9. The fact that property may be utilized more profitably will not be an element of consideration before the decision maker.

E. The public works director's decision shall be made by written findings and conclusions and is an administrative decision which may be appealed by the applicant only pursuant to Chapter 1.14 PTMC, upon payment of an appeal filing fee in the amount set forth by council resolution. (Ord. 3051 § 1 (Exh. A), 2010; Ord. 2578 § 1, 1997).

Article IV. Liability, Violations and Appeals