

Drainage structures within the setback and within 10 feet of an adjacent property

BACKGROUND:

The drainage manual as adopted in 2016 prohibited detention facilities within ten feet of an adjacent property. Code Section 103-232(f). Prior to its deletion, subsection (f) read:

"(f) Detention facilities shall be located at minimum ten foot setback from all property lines. The setback requirement shall be measured from the edge of any portion of the facility such as top of embankment, and of concrete apron/rock rip rap or top of structural wall."

This subsection was deleted in April 2020, by Ord. No. [2020-04-30-05](#), § 2, 4-30-2020. Deletion of subsection (f) has led to the following concerns:

CONCERNS:

Interference with easements: Drainage facilities/channels running within a utility easement hamper ready access to the utility for repair, maintenance, upgrade, etc., adding costs, complications, and potential damaging delay in repair, to the detriment of the community. Allowing surface and subsurface detention facilities within easements and rights of way interferes with the intended use of such easements and rights of way for public purposes (public utilities, street rights of way) both in use of, access to, and maintenance of such easements and rights of way.

Interference/problems with adjacent properties: Above surface structural detention facilities (example: rainwater tanks) can interfere with the ability to use vegetative barriers between lots, and limit access to air, light, and other benefits a setback is intended to provide between adjacent homeowners. Subsurface detention facilities located at the property line or within a 10-foot setback from the property line allows excavation at the property line that can cause structural damage or other property damage to adjacent lots, prevents the setback from being used for vegetative barriers between lots, can damage trees on adjacent lots through damage to critical root zones, and prevents ready access to the detention facility for maintenance and inspection. When the setback restriction was eliminated in 2020, the concern was that above surface detention structures located within the buildable area created "moats" between the buildable area and the property line.

PROPOSED SOLUTION:

Subsection (f): This new subsection requires that detention facilities be located outside of rights of way, public utility easements and natural drainage channels. It protects access to, and repair and maintenance of, and capacities of city rights of way, utility easements, drainage easements, natural drainage channels, and other subsurface utilities, like gas lines and Google fiber, that might not be recorded on a plat or recorded utility easement, by requiring that detention facilities be located outside of such easements and rights of way.

Subsections (g), (h), and (i). The new language hits a mid-point between the pre-2020 prohibition of use of the setback for any drainage facility and the post-2020 removal of any restriction on the location of such facilities:

New (g) prohibits detention facilities within 10-feet of a property line except as permitted in new (h) and (i).

New (h) permits above surface, non-structural detention facilities (such as earthen berms, non-mortared landscape features) within 5 feet of property line if not within utility easement, drainage easement, or natural drainage channel.

New (i) creates an exception that permits buried pipes that convey storm water from a detention facility to a curb to cross a front or side setback adjacent to a street, thus addressing the "moat" issue by allowing non-hardened detention within 5 feet of the property line, and by allowing permitted discharged storm water to be piped to the curb (when a curb discharge pipe is allowed under the existing permit process).