

# STAFF REPORT



**SUBJECT:** Case No.: SV2021-002

Applicant Mike's Westside Rental, is requesting a subdivision waiver from Section 155.6.04.M (1) – Curb and Gutter along County Road 257 (Peach Orchard), located at Parcel R23789, Lot 2, Block 1, Excels Addition, to the City of Stephenville, Erath County, Texas.

**DEPARTMENT:** Development Services

**STAFF CONTACT:** Steve Killen

## RECOMMENDATION:

The Planning and Zoning Commission convened on March 10, 2021, and by a vote of 3/1, recommended the City Council approve the waiver request.

## BACKGROUND:

The applicant was recently approved for a sidewalk waiver for the portion of the property facing Washington/Hwy 377. The property also has frontage on Peach Orchard and additional waivers were submitted to curb and gutter along Hwy 377 and for the curb, gutter and sidewalk improvements along Peach Orchard.

After discussion and an expressed interest in recommending the waiver be approved with a condition that would delay the installment of the improvement until the road improvement is completed, the Commission recommended approval of the waiver.

## CURRENT ZONING:

B-2 – Retail and Commercial

## FUTURE LAND USE:

Commercial

## SUBDIVISION ORDINANCE/CURBS

M. *Curb and Gutter Options.*

1. A six (6) inch standard curb shall be constructed on both sides of all streets except as allowed in 2 and 3 below.
2. On residential local streets and any subdivision where all lots are one (1) acre or larger, a "lay down" or "roll down" curb shall be permitted if designed in accordance with Engineering Standards Manual.
3. On subdivision where all lots are one acre or larger, a "ribbon curb" shall be permitted if designed in Engineering Standards Manual.

## SUBDIVISION ORDINANCE/WAIVER REQUESTS

Sec. 155.7.01. - Petition for subdivision waiver.

- A. *Purpose.* The purpose of a petition for a Subdivision Waiver to a particular standard or requirement with these Subdivision Regulations, as such are applicable to Plats or Construction Plans, is to determine whether such particular standard or requirement should be applied to an Application.

B. *Definitions.* Subdivision Waivers shall be classified as a Minor Subdivision Waiver or Major Subdivision Waiver.

C. *Decision-Maker.*

1. *Minor Subdivision Waiver.*

a. *Decision-Maker Authority.*

i. The City Administrator shall act upon a Minor Subdivision Waiver listed in Table 8.

b. *Appeal of a Minor Subdivision Waiver Decision.*

i. *Appeal Review and Recommendation.* An appeal of the Minor Subdivision Waiver decision may be considered by the Commission.

ii. *Appeal Decision.* If further appeal is made, the City Council shall then act on such an appeal. (See 7.01.J Minor Subdivision Waiver Appeal)

Table 8: Minor Subdivision Waiver		
Section	Standard	City Administrator
3.01.B	Waiver of Application Information	Approve
6.06.N	Dead-End Alleys	Approve
6.10.D	Right Angles for Side Lot Lines	Approve
6.05.D	Traffic Impact Analysis	Approve
6.13.A.5	Water Lines Extended to Subdivision Borders	Approve
6.14.A.5	Wastewater Lines Extended to Subdivision Borders	Approve

2. *Major Subdivision Waiver.*

a. *Decision Maker Authority.* After review and recommendation from the Commission, the City Council shall decide a Major Subdivision Waiver.

D. *Subdivision Waiver Applicability.*

1. *Waiver of Standard or Requirement.*

a. An Applicant may request a Subdivision Waiver of a particular standard or requirement applicable to a Preliminary Plat, to Construction Plans, or where no Preliminary Plat Application has been submitted for approval, to a Final Plat or a Replat.

b. A Subdivision Waiver petition shall be specific in nature, and shall only involve relief consideration for one particular standard or requirement.

c. An Applicant may, if desired, submit more than one Subdivision Waiver petition if there are several standards or requirements at issue.

d. For processing a Subdivision Waiver in relationship with a Plat Application, an Applicant shall submit a Waiver of Right to 30-Day Action in accordance with 3.03.D Waiver of Right to 30-Day Action.

2. *Waiver Petition Acceptance.*

a. A petition for a Subdivision Waiver shall not be accepted in lieu of:

- i. A Subdivision Proportionality Appeal (7.02); or
- ii. A Subdivision Vested Rights Petition (7.03).
- b. If there is a question as to whether a Subdivision Proportionality Appeal or Subdivision Vested Rights Petition is required instead of a Subdivision Waiver petition, such determination shall be made by the City Administrator.

E. *Subdivision Waiver Submission Procedures.*

1. *Written Waiver Request with Application.*

- a. A request for a Subdivision Waiver shall be submitted in writing by the Applicant with the filing of a Preliminary Plat, Construction Plans, Final Plat or Replat, as applicable.
- b. No Subdivision Waiver may be considered or granted unless the Applicant has made such written request.

2. *Grounds for Waiver.*

- a. The Applicant's request shall state the grounds for the Subdivision Waiver request and all of the facts relied upon by the Applicant.
- b. Failure to do so, will result in denial of the Application unless the Applicant submits a Waiver of Right to 30-Day Action in accordance with 3.03.D Waiver of Right to 30-Day Action.

F. *Subdivision Waiver Criteria.*

- 1. *Undue Hardship Present.* A Subdivision Waiver to regulations within this Subdivision Ordinance may be approved only when, in the Decision-Maker's opinion, undue hardship will result from strict compliance to the regulations.
- 2. *Consideration Factors.* The Decision-Maker shall take into account the following factors:
  - a. The nature of the proposed land use involved and existing uses of the land in the vicinity;
  - b. The number of persons who will reside or work in the proposed development; and
  - c. The effect such Subdivision Waiver might have upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.
- 3. *Findings.* No Subdivision Waiver shall be granted unless the Decision-Maker finds:
  - a. That there are special circumstances or conditions affecting the land involved or other constraints such that the strict application of the provisions of this Subdivision Ordinance would deprive the Applicant of the reasonable use of his or her land; and
  - b. That the Subdivision Waiver is necessary for the preservation and enjoyment of a substantial property right of the Applicant, and that the granting of the Subdivision Waiver will not be detrimental to the public health, safety or welfare or injurious to other property in the area; and
  - c. That the granting of the Subdivision Waiver will not have the effect of preventing the orderly subdivision of other lands in the area in accordance with the provisions of this Subdivision Ordinance.
- 4. *Intent of Subdivision Regulations.*
  - a. A Subdivision Waiver may be granted only when in harmony with the general purpose and intent of the Subdivision Ordinance so that the public health, safety and welfare may be secured and substantial justice done.
  - b. Financial hardship to the Applicant shall not be deemed to constitute undue hardship.
- 5. *Minimum Degree of Variation.* No Subdivision Waiver shall be granted unless it represents the minimum degree of variation of requirements necessary to meet the needs of the Applicant.
- 6. *Violations and Conflicts.* The Decision-Maker shall not authorize a Subdivision Waiver that would constitute a violation of, or conflict with, any other valid ordinance, code, regulation, master plan or Comprehensive Plan of the City.
- 7. *Falsification of Information.*

- a. Any falsification of information by the Applicant shall be cause for the Subdivision Waiver request to be denied.
- b. If the Subdivision Waiver request is approved based upon false information, whether intentional or not, discovery of such false information shall nullify prior approval of the Subdivision Waiver, and shall be grounds for reconsideration of the Subdivision Waiver request.

**G. Burden of Proof.** The Applicant bears the burden of proof to demonstrate that the requirement for which a Subdivision Waiver is requested, if uniformly applied, imposes an undue hardship or disproportionate burden on the Applicant. The Applicant shall submit the burden of proof with the original submittal.

**H. Subdivision Waiver Decision.**

- 1. The Decision-Maker shall consider the Subdivision Waiver petition and, based upon the criteria set forth in 7.01.F Subdivision Waiver Criteria, shall take one of the following actions:
  - a. Deny the petition, and impose the standard or requirement as it is stated in this Subdivision Ordinance; or
  - b. Grant the petition, and waive in whole or in part the standard or requirement as it is stated in this Subdivision Ordinance.
- 2. Decision Process for a Minor Subdivision Waiver. The Decision-Maker shall deny or grant a request for a Minor Subdivision Waiver concurrently with the decision of a Preliminary Plat, Construction Plans, Final Plat or Replat, as applicable.
- 3. Decision Process for a Major Subdivision Waiver.
  - a. Recommendation of the Planning and Zoning Commission.
    - i. The Commission shall consider the Major Subdivision Waiver request at a public meeting no later than thirty (30) calendar days after the date on which the notice of Major Subdivision Waiver is submitted to the City Administrator.
    - ii. The Commission shall recommend to the City Council to approve or deny a request for a Major Subdivision Waiver by majority vote.
  - b. Decision by City Council.
    - i. After the recommendation from the Commission has been made, the City Council shall consider the Major Subdivision Waiver request at a public meeting no later than thirty (30) calendar days after the date on which the Commission's recommendation was made.
    - ii. The City Council may or shall approve or deny a request for a Major Subdivision Waiver by a vote of all members.
    - iii. The decision of the City Council is final.

**I. Notification of Decision on Petition—14 Days.** The Applicant shall be notified of the decision on the Subdivision Waiver by the applicable Decision-Maker (e.g., the City Administrator, Commission or City Council, as applicable), within fourteen (14) calendar days following the decision.

**J. Minor Subdivision Waiver Appeal.**

- 1. *Initiation of an Appeal.*
  - a. The Applicant may appeal a Minor Subdivision Waiver decision of the City Administrator, as allowed within the Subdivision Ordinance.
  - b. The written request to appeal shall be submitted to the City Administrator within thirty (30) calendar days following the denial decision.
- 2. *Recommendation of the Planning and Zoning Commission.*
  - a. The Commission shall consider the appeal at a public meeting no later than thirty (30) calendar days after the date on which the notice of appeal is submitted to the City Administrator.
  - b. At this meeting, new information may be presented and considered, if available, that might alter the previous decision to deny the Minor Subdivision Waiver.

- c. The Commission shall recommend to the City Council to affirm, modify or reverse the previous decision by simple majority vote.

3. *Appeal to City Council.*

- a. The Applicant may appeal the Commission's decision by submitting a written notice of appeal to the City Administrator within thirty (30) calendar days following the Commission's decision.
- b. After the recommendation from the Commission has been made, the City Council shall consider the appeal at a public meeting no later than thirty (30) calendar days after the date on which the Commission's recommendation was made.
- c. The City Council may affirm, modify or reverse the decision by simple majority vote.
- d. The decision of the City Council is final.

K. *Effect of Approval.*

1. *Submission and Processing.* Following the granting of a Subdivision Waiver, the Applicant may submit or continue the processing of a Plat or Construction Plans, as applicable.
2. *Expirations.* The Subdivision Waiver granted shall remain in effect for the period the Plat or Construction Plans are in effect, and shall expire upon expiration of either or both of those Applications.
3. *Extensions.* Extension of those Applications shall also result in extension of the Subdivision Waiver.

**WATER:**

The property is served by a 6" city water main in Washington/HWY 377 and a 12" city water main in Peach Orchard.

**SEWER:**

The property is served by a 10" sanitary sewer main in Washington/HWY 377.

**STREET:**

The property is served by a Washington/HWY 377 and Peach Orchard.

**ZONING AND LAND USE:**

Location	Zoning	Future Land Use
Subject Site	(B-2) Retail and Commercial	Commercial
North	(B-2) Retail and Commercial	Commercial
South	(B-2) Retail and Commercial	Commercial
East	(AG) Agriculture	Commercial
West	(B-2) Retail and Commercial	Commercial

**FACTORS TO CONSIDER:**

- Compliance with Comprehensive Plan?
- Is application consistent with Plan?
- If not, have conditions changed or new information been offered to support change?
- Surrounding Zoning and Land Use

- Infrastructure Impacts
- Size and Location of Parcel - is land large enough and in proper location for proposed use?
- Reasonable Use of Property - does proposed change provide reasonable use of property?
- Zoning has great discretion - deny if applicant has not proven it is in the best interest of City to rezone

## ALTERNATIVES

- 1) Accept the recommendation from the Planning and Zoning Commission and approve the waiver request.
- 2) Modify the recommendation of the Planning and Zoning Commission under the recent revisions to the subdivision ordinance in regards to the sidewalk waiver fees.
- 3) Over-rule the recommendation of the Planning and Zoning Commission and deny the waiver request.