

STAFF REPORT



SUBJECT: Case No.: SV2022-003

Applicant Dee Stephens, representing Erath County, is requesting a Subdivision Waiver from Section 155.06.08.C. for Sight Visibility Easement from 45' x 45' non-residential to 20' x 20' for minimum residential for property located at 222 E College, Parcel R29239, being Lot 1,2,3, &4 of Block 14 of City Addition to the City of Stephenville, Erath County, Texas

DEPARTMENT: Development Services

STAFF CONTACT: Steve Killen, Director of Development Services

RECOMMENDATION:

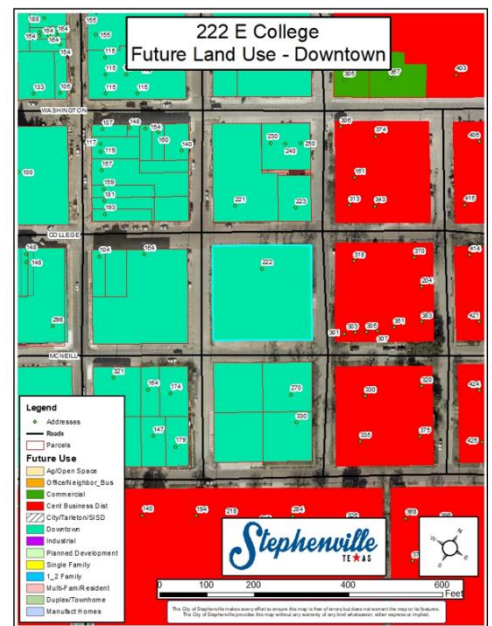
The Planning and Zoning Commission convened on April 20, 2022, and by a vote of 5/2, recommended the City Council approve the waiver request.

BACKGROUND:

APPLICANT REQUEST:

Applicant is requesting a waiver from sight visibility easement requirements because of existing conditions on College Street.

PROPERTY PROFILE:



Located on E College Street between Virginia and Floral

DESCRIPTION OF REQUESTED WAIVER:

Sec. 155.6.08. Easements and dedications.

Easements and fee simple dedication of all property needed for the construction of streets, Major Arterial/Thoroughfare Street, alleys, private common access easements, sidewalks, storm drainage facilities, floodways, water mains, wastewater mains and other utilities, retaining walls and any other property necessary to serve the Plat and to implement the requirements of the Subdivision Ordinance and Engineering Standards Manual shall be provided on Subdivision Plats and maintained by the property owner.

A. *Utility Easements.*

1. Where not adjacent to a public Right-of-Way, easements at least sixteen (16) feet wide shall be provided for utility construction, service, and maintenance shall be provided where necessary.
2. Easements accommodating both water and wastewater (sewer) facilities and easements accommodating both public utilities and franchise utilities shall be at least twenty (20) feet wide.
 - a. More easements or additional easement width may be required by the Planning and Zoning Commission if deemed necessary by the City Administrator.
3. Easements at least sixteen (16) feet wide for utility construction, service, and maintenance shall be provided for lots which have frontage along state highways.
4. Easements of at least eight (8) feet in width shall be provided on each side of all rear lot lines and alongside lot lines, where necessary, for utilities to ensure a total easement width of sixteen (16) feet.
5. Easements having greater width dimensions may also be required along or across lots where engineering design or special conditions make it necessary for the installation of utilities and drainage facilities outside public Right-of-Way.
6. The following full statement of restrictions shall be placed in the dedication instrument:

Easements: Any public utility, including the City, shall have the right to move and keep moved all or part of any building, fences, trees, shrubs, other growths on any of the easements or Right-of-Way shown on the Plat (or filed by separate instrument that is associated with said property); and any public utility, including the City, shall have the right at all times of ingress and egress to and from and upon said easements for the purpose of construction, reconstruction, inspection, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone. Easements shall be maintained by property owners. The City can move trees or any other improvements and does not have the responsibility to replace them.

B. *Fire Lane Easement.*

1. Emergency access and fire lane easements shall be provided in locations required by the City and be curbed.
2. These easements shall have a minimum width of twenty-four (24) feet and a minimum height clearance of fourteen and a half feet (14'6"). Internal drives within parking lots are not required to be curbed.
3. All turns shall have a minimum inside radius of twenty-six (26) feet and a minimum outside radius of 50'.

4. Any emergency access and fire lane easement more than one hundred and fifty (150') feet in length shall either connect at each end to a dedicated public street or private way or be provided with a cul-de-sac having one hundred and fifty (150') feet diameter of paving with an additional distance of ten (10) feet on all sides clear of permanent structures or other obstructions.
5. These easements shall be maintained by the owner or the Homeowners' or Property Owners' Association and a statement shall appear on the face of the Plat indicating maintenance responsibility.

C. Triangular Sight Visibility Easements.

1. Triangular sight visibility easements shall be required as follows for properties whose zoning falls within one of the following categories:
 - a. Residential zoning districts (including all single family, multi-family, mobile/modular home zoning districts and planned development districts having a single family, multi-family or mobile/modular home use designation):
 - i. 20' x 20' sight visibility easements on corner lots at the intersection of two streets.
 - b. Nonresidential zoning districts (including all commercial, industrial and utility districts and planned development districts having a commercial, industrial or utility use designation):
 - i. 45' x 45' sight visibility easement on corner lots at the intersection of two streets.
 - c. Multi-family and nonresidential zoning districts (including all multi-family, commercial, industrial and utility districts and planned development districts having a commercial, industrial or utility use designation):
 - i. 15' x 15' sight visibility easements at the main driveways.
 - d. All zoning districts (as noted above):
 - i. 15' x 15' sight visibility easements on corner lots at the intersection of an alley and a street.

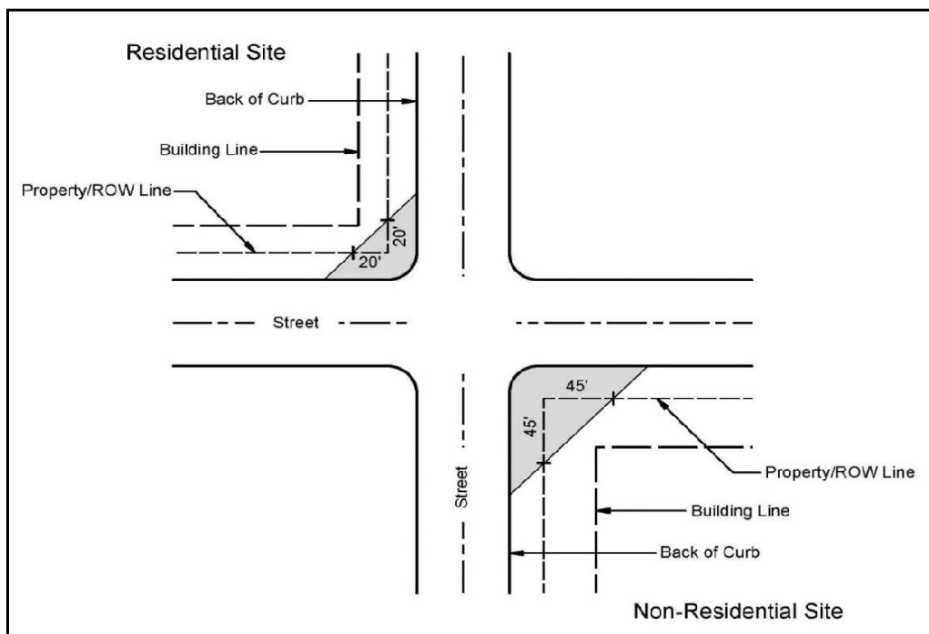


Figure 9: Visibility Triangle

2. The following full statement of restrictions shall be placed in the dedication instrument or on the face of the Plat:

Sight Visibility Restriction: No structure, object, or plant of any type may obstruct vision from a height of twenty-four (24) inches to a height of ten (10) feet above the top of the curb, including, but not limited to buildings, fences, walks, signs, trees, shrubs, cars, trucks, etc., in the sight visibility easement as shown on the Plat. These sight visibility easements will remain in effect until vacated by ordinance adopted by the City Council and the property replatted.

3. On commercially zoned lots, the preceding triangular sight visibility restrictions may be altered to permit the placement within the easement area of one single pole sign, not to exceed fourteen (14) inches in diameter, with every portion of said sign allowing minimum height clearance between it and the ground of ten (10) feet.

D. *Drainage Easements.*

1. Easements for storm drainage facilities shall be provided at locations containing proposed or existing drainage ways.
2. Storm drainage easements of sixteen (16) feet minimum width shall be provided for existing and proposed enclosed drainage systems.
 - a. Easements shall be centered over the systems.
 - b. Larger easements, where necessary, shall be provided as directed by the City Administrator.
3. Where lot-to-lot drainage occurs, a drainage easement at least ten (10) feet in width shall be provided along the back and down one side of the downstream property. For information regarding applicable drainage standards see 6.15 Drainage and Storm Water, specifically 6.15.C.1. Lot to Lot Drainage Standards.
4. Storm drainage easements shall be provided for emergency overflow drainage ways of sufficient width to contain within the easement storm water resulting from a 100-year frequency storm less the amount of storm water carried in an enclosed system of a capacity required by the City.
5. Where a Subdivision is bounded by a water-course, drainage way, channel, or stream, there shall be provided a storm water easement or drainage Right-of-Way conforming substantially to the lines of such water course, and of such width to provide for increased drainage from anticipated future upstream developments, plus a minimum of ten (10) feet on each side.
6. As required by the City, drainage easements shall be dedicated up to the full width of easement necessary to construct the ultimate drainage facility (culvert, storm water, channel, etc.) to be constructed within the easement, including provisions for access ingress and egress for maintenance purposes.

E. *Floodplain Easements.*

1. Floodplain easements shall be provided along natural drainage ways, lakes or reservoirs.
2. Floodplain easements shall be provided in accordance with the recommendation of the City Administrator to accommodate the 100 year storm drainage flows or the flow of the flood of record, whichever is greater.
3. Floodplain easements shall encompass all areas beneath the water surface elevation of the Base Flood, plus such additional width as may be required to provide ingress and egress to allow

maintenance of the banks and for the protection of adjacent property, as determined by the City Administrator.

4. The following full statement shall be placed in the dedication instrument of the Plat:

Floodplain Easement Restriction: Construction within the floodplain may only occur with the written approval of the City. A request for construction within the floodplain easement must be accompanied with detailed engineering plans and studies indicating that no flooding will result, that no obstruction to the natural flow of water will result; and subject to all owners or the property affected by such construction becoming a party to the request. Where construction is permitted, all finished floor elevations shall be a minimum of one (1) foot above the 100-year flood elevation as determined by analyzing the ultimate build-out conditions of the entire drainage basin.

- a. Existing creeks, lakes, reservoirs, or drainage channels traversing along or across portions of this addition, will remain as an open channel at all times and will be maintained by the individual owners of the lot or lots that are traversed by the drainage courses along or across said lots. The City will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion. Each property owner shall keep the natural drainage channels traversing his/her property clean and free of debris, silt, or any substance, which would result in unsanitary conditions. The City shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions, which may occur.
- b. The natural drainage channel, as in the case of all natural drainage channels, are subject to storm water overflow and natural bank erosion. The City shall not be liable for damages of any nature resulting from the occurrence of these natural phenomena, nor resulting from a failure of any structure(s) within the natural drainage channels. The natural drainage channel crossing each lot is shown by the Floodway easement line as shown on the plat. If a Subdivision alters the horizontal or vertical floodplain, a FEMA Floodway map revision may be required.

F. *Retaining Wall Easements.*

1. If in the opinion of the City Administrator, the grading plans submitted with the Application for approval of a Final Plat indicate a need for the construction of one or more retaining walls over 6' in height, a private retaining wall easement showing the location of the retaining wall(s) and the no-build zone shall be dedicated and shown on the Preliminary Plat and the Final Plat.
 2. The width of the retaining wall easement shall be 10 feet or the width of the retaining wall, whichever is greater, plus the width of the no-building zone, as established by the Applicant's structural engineer and approved by the City Administrator.
 3. The retaining wall easement shall include a no-building zone extending from the retaining wall on both sides, within which any additional load from future construction would exceed the design capacity of the retaining wall.
- a. No structure (other than the retaining wall), swimming pool, landscaping, or any other feature which adds load to the retaining wall, shall be constructed within the no-building zone.
 4. A retaining wall easement shall be located entirely on one lot and shall not straddle property lines unless the wall is constructed within a retaining wall easement dedicated to the Homeowners' or Property Owners' Association in accordance with 6.08.F.5 (below).
 5. The Homeowners' or Property Owners' Association for the subdivision, as applicable, shall be responsible for maintenance of the retaining wall, and a note shall be included to this effect on the Final Plat.

G. *Needs/Benefits Determination.*

1. No dedication otherwise required by this ordinance may be imposed upon a property owner unless the City determines that the dedication is related to the impact of the proposed development; is roughly proportional to the needs created by the proposed development; and provides a benefit to the development.
2. An Applicant may appeal a staff recommendation that a dedication be required in accordance with the provisions of Section 7 Relief from Subdivision Design Standards.

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 or Assistant City Manager 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/ Assistant City Manager
1.06.A.8	Thoroughfare Plan	Approve
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.
3. *Waiver from the Requirements for Sidewalks, Curbs, and/or Gutters.*
 - a. The City Manager, Assistant City Manager, and the Director of Development Services are authorized to grant waivers for Sidewalks, Curbs, and/or Gutters under the following conditions:
 - i. The property was platted prior to March 1, 2021; and
 - ii. The property is located outside of the City of Stephenville's Sidewalk Improvement Area as defined in Resolution No. 2019-R-05.

- b. Waivers requested that do not qualify under the conditions outlined in Section 3.a. above must follow the procedure for a Major Subdivision Waiver.
- c. Applicants whose request for waiver is denied by the City Manager, Assistant City Manager, or the Director of Development Services may appeal this decision. Appeals under Section 3 will follow the procedures for appealing a Minor Subdivision Waiver as set forth in Section J.
- d. All approved waivers require the payment of a fee equal to 25% of the total improvement cost as determined by the city's current bid contract for such improvements. Fees collected will be dedicated to the City's Sidewalk Cost Share Program.

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.

(Ord. No. 2020-O-38 , §§ 2, 3, 11-16-2020; Ord. No. 2021-O-06 , § 1, passed 2-2-2021)

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 property 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 approve

ALTERNATIVES:

- 1) Accept the recommendation and approve the waiver request.
- 2) Reject the recommendation and deny the waiver request.

Exhibit – Aerial of property

