



# Memo

**To:** Development Review Board  
Kent Johnson, Town Planner, Sharon Kelley, Zoning Administrator, Britany  
McGregor, Planning Technician  
**From:** Katherine Sonnick, Community Development Director  
**Date:** January 15, 2026  
**Subject:** The use of waivers in development review

**Issue:** The issue is to inform the Development Review Board (DRB) about the use of waivers in the Subdivision Regulations and Zoning Regulations in development review.

**Discussion:** The question about the use of waivers in development review has surfaced quite a bit recently with the DRB, PC, and recently with the Selectboard. As a result, the Community Development Director recently requested a legal opinion from the Town Attorney and the Land Use attorneys at the Vermont League of Cities and Towns (VLCT) on the use of waivers both in relation to allowances of the use of waivers in state statute and the existing waiver language in the Town’s Zoning and Subdivision regulations.

First, the question of waivers in the Zoning Regulations. Legal advice has stated that state statute provides allowance for the DRB may waive any standard in the Zoning Regulations if it furthers the Town Plan and doesn’t contradict with state statute. However, there needs to be specific language in the zoning regulations for what is being waived. For example, right now we have a height waiver and the RPD-I buffer waiver in the Zoning Regulations. Those two standards can be waived by the DRB. In contrast, there isn’t a specified waiver in the Zoning Regulations for setbacks, or for steep slopes, so those can’t be waived at this point. To have these standards waived, the Planning Commission would have to amend the Zoning Regulations to allow these standards to be waived or to amend the specific sections to allow more flexibility without a waiver.

Second, the question of waivers in the Subdivision Regulations. State statute allows a waiver of subdivision standards as long as it doesn’t nullify the intent of the Town Plan and the Zoning Regulations. Essex has such a waiver currently, Section 2.1:

**Section 2.1 Waivers:** *Where the Planning Commission (now DRB) finds that extraordinary and unnecessary hardships may result from strict compliance with these Regulations, or where there are special circumstances of a particular subdivision, it may make the minimum modifications to the Regulations necessary to afford relief without nullifying or*

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*adversely affecting the intent and purpose of the Town Plan or the Zoning Regulations.*

- 1. Where the Planning Commission (now DRB) finds that, due to special circumstances of a particular subdivision, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare, or that connecting facilities are not adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.*
- 2. When in the opinion of the Planning Commission (now DRB) the number of submissions, as required by strict compliance with these regulations, seems excessive and unnecessary for full review, the Commission (now Board) may waive or combine some of the submissions. In no case may it waive the Public Hearing of the final submission or recording of the subdivision plat.*
- 3. In granting waivers, the Planning Commission (now DRB) shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived.*
- 4. Where the Planning Commission (now DRB), after recommendation from the Town Engineer, believes a waiver from the requirements of the Public Works Specifications is appropriate for a particular subdivision and such finding is in accordance with the above subsections, the Selectboard may grant such a waiver.*

This waiver allows the DRB to waive Subdivision Regulation standards. Legal advice has clarified that it does not allow any waivers of Zoning Regulation standards.

The legal advice has clarified that Subdivision Regulation Section 2.1 cannot be used to waive a requirement in the Zoning or any other regulations/ordinances. This Subdivision waiver can be used only to waive a standard in the Subdivision Regulations. The Subdivision Regulation waiver is quite broad – anything in the Subdivision Regulations can be waived as long as it doesn't nullify or adversely affect the intent and purpose of the Town Plan or the Zoning Regulations.

Note that the Subdivision Regulation Sections 2.1 waiver still cannot be used to waive any Zoning Regulation standard even if an application being reviewed includes both site plan (which is a Zoning Regulation standard) and a subdivision (which is reviewed under Subdivision Regulation standards).

**Costs:** NA

**Recommendation:** Staff recommend that the DRB adhere to the legal advice received and limit the use of waivers. Specifically, only waivers currently specified in the Zoning Regulations may be used to waive Zoning Regulation standards and Subdivision waiver Section 2.1 may only be used to waive standards in the Subdivision Regulations.