

SUBCHAPTER 12 WAIVER OF STRICT ADHERENCE TO REVIEW STANDARDS

7:45-12.1 Purpose

This subchapter establishes procedures and standards pursuant to which the Commission may waive strict adherence to one or more of the review standards in this chapter. Waivers granted pursuant to this subchapter are intended to provide relief where strict adherence to the Commission's review standards will create an extreme economic hardship or where the waiver is necessary on the grounds that the project serves a compelling public need, or where the Commission determines that the waiver granted will not create an adverse impact on the Park and will not impair the intent and purpose of the Master Plan or this chapter.

7:45-12.2 Procedure

- (a) A waiver request shall be in writing and shall demonstrate that the project will comply with this Chapter, subject to the waiver. The request shall also include the documentation required for approval of a project under N.J.A.C. 7:45-3, and must include all documentation that N.J.A.C. 7:45-3 requires for the standard for which a waiver is sought.
- (b) To support a waiver based upon extreme economic hardship, the applicant shall submit to the Commission documentation including, but not limited to, the following:
 - 1. Proof that any current use of the property is not capable of yielding a reasonable return if its present use is continued;
 - 2. Identification of the specific regulatory provisions for which the applicant seeks a waiver;
 - 3. An explanation of how the project has been designed to comply as much as possible with the other parts of this chapter as well as any proposed mitigation techniques proposed to offset waiving strict adherence to the requirements of this chapter;
 - 4. Documentation that the subject property has been offered for sale for market value, as defined in the Green Acres Program rules at N.J.A.C. 7:36-2.1, to other interested parties including the contact persons and phone numbers (including adjacent land owners, the Department's Green Acres program, or other conservation groups) and that they are not interested in purchasing the property for market value.
 - 5. A complete purchase contract for the subject property;
 - 6. A title report and the title policy;
 - 7. The survey used for the purchase;
 - 8. A copy of any mortgage on the property since acquisition by the present owner; and
 - 9. A copy of current municipal zoning ordinance and permissible uses for the site.
- (c) Within 30 days after the date that an application for waiver is received in the Commission's office, the Commission staff shall review the application to determine if all the items required for a complete application have been submitted and take one of the following actions:
 - 1. Notify the applicant in writing of any missing items required for a complete application; or
 - 2. Notify the applicant in writing that the application is complete.
- (d) The Commission shall determine whether to deny, approve or approve with conditions an application for a waiver from project review within 45 days from the date when an application has been declared complete. The Commission may require specific compensatory measures to mitigate the project's potential harmful impact on the Park as conditions of a waiver approval.

- (e) The Commission shall issue a notice of decision containing its determination on the waiver application. The notice of decision shall be issued in accordance with N.J.A.C. 7:45-3.9.
- (f) The notice of decision on the waiver application shall advise the applicant, municipal reviewing agency and those interested parties who specifically requested notice of the Commission's decision of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for a hearing shall be submitted and acted on pursuant to N.J.A.C. 7:45-7.
- (g) A waiver of one or more requirements shall lapse:
 - 1. If construction is not complete within five years from the date of the approval; or
 - 2. If the municipal permits or approvals expire, lapse, or are revoked.

7:45-12.3 Waiver of review standards due to extreme economic hardship or compelling public need

- (a) The Commission may waive a requirement of this chapter, upon a clear and convincing demonstration by the applicant that:
 - 1. Strict adherence to the review standards or to a specific requirement of this chapter would not be practical and would result in extreme economic hardship, or would conflict with a compelling public need; and
 - 2. The project will not impair the intent and purpose of the Master Plan or this chapter.
- (b) The Commission shall use the following standards in reviewing economic hardship waiver applications:
 - 1. The literal enforcement of this chapter would result in an extreme economic hardship, as distinguished from a mere inconvenience, because of the particular physical surroundings, shape or topographical conditions of the property involved. The necessity of acquiring additional land to meet the setback requirements of this chapter shall not be considered an extreme economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available; and
 - 2. An applicant shall be deemed to have established the existence of an extreme economic hardship only if the applicant demonstrates, based on specific facts, that the subject property is not capable of yielding a reasonable return if its present use is continued, or if it is developed as authorized by provisions of this chapter and that this inability to yield a reasonable return results from unique circumstances peculiar to the subject property that:
 - i. Do not apply to or affect other property in the immediate vicinity;
 - ii. Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and
 - iii. Are not the result of any action or inaction by the applicant or the owner or his predecessors in title; and
 - 3. The applicant has provided documentation showing that the subject property has been offered for sale for market value, as defined in the Green Acres Program rules at N.J.A.C. 7:36-2.1 to other interested parties (including adjacent land owners, the Department's Green Acres program, or other conservation groups), and that none of the parties has expressed an interest in acquiring the subject property for market value.
- (c) An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, that:
 - 1. The proposed project will serve an essential public health or safety need;
 - 2. The public health and safety require the requested waiver;
 - 3. The proposed use is required to serve existing public health or safety needs; and

4. There is no alternative available to meet the established public health or safety need.
- (d) Any waiver granted due to economic hardship or compelling public need must meet the following criteria:
1. The waiver is the minimum relief necessary to relieve the hardship or need.
 2. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Master Plan or this chapter; and
 3. The granting of the waiver will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, will not endanger public safety or will not result in substantial impairment of the resources of the Park.

7:45-12.4 Waiver of stream corridor impact standards

- (a) Projects otherwise subject to review by the Commission for stream corridor impact may be waived from strict adherence to such standards if the applicant establishes to the satisfaction of the Commission that:
1. The project will not have an adverse impact upon the stream corridor's ability to function as a buffer for the water course's ecological health and as a natural area; or
 2. The project incorporates environmentally sound site planning techniques, or preserves other natural areas, either of which can be demonstrated to have a greater ecologically beneficial effect than would compliance with this chapter. Neither of these techniques will be accepted by the Commission, however, for proposals that include either:
 - i. Intrusions into the 100-year flood plain portion of the stream corridor; or
 - ii. For water courses that drain directly into the Canal, intrusions within 150 feet of their tops of banks.

7:45-12.5 Waiver of traffic impact standards

Projects otherwise subject to review by the Commission for traffic impact will be waived from strict adherence to such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.

7:45-12.6 Waiver of stormwater runoff and water quality impact standards

- (a) Projects otherwise subject to review by the Commission for stormwater runoff and water quality impact may be waived from strict adherence to such standards if the applicant establishes to the satisfaction of the Commission that:
1. The project will not adversely affect, either directly or indirectly, the quality of surface waters of the Park under either wet or dry weather conditions; and
 2. The groundwater effects produced by the project are unlikely to measurably harm the quality of the surface waters or groundwaters of the Park.
- (b) An application for a waiver to install a new outfall or discharge stormwater into waters or conduits that flow into the Canal shall include documentation to show that the prohibition of such discharge will result in an extreme economic hardship or that the project will serve a compelling public need as described at N.J.A.C. 7:45-12.3.
- (c) The proposed new discharge as described at (b) above is to be treated to meet the water quality standard of 95 percent TSS removal.
- (d) If the Commission finds, based on the applicant's submissions, that the proposed new discharge as described at (b) above cannot be treated to meet the water quality at (c) above because the requirement will result in an extreme economic hardship or that the project will

serve a compelling public need, such that a lower treatment standard is appropriate, the applicant shall:

1. Present to the Commission a proposal to treat untreated stormwater in the Canal's drainage basin to achieve an equivalent reduction in TSS loadings for a volume of stormwater equal to double the volume of stormwater generated by the proposed project (cubic feet based on the water quality storm) or treatment for double the rate of flow (cubic feet per second based on the water quality storm), whichever provides greater mitigation; or
2. Include in its project a cash donation to a mitigation bank administered by the New Jersey Water Supply Authority to be used for water quality improvement projects for the Canal with the equivalent mitigation benefits.

7:45-12.7 Waiver of visual, historic and natural quality impact standards

- (a) Projects otherwise subject to the visual, historic and natural quality standards may be waived from strict adherence to such standards, if the applicant establishes to the satisfaction of the Commission that visual screening will continue to exist in the future, and;
 1. Wherever possible, natural terrains, soils and vegetation are to be preserved, and new vegetation and soils are to be native to the environment in which they are placed; and
 - i. The topography of the land screens the entire project from the view of a person in the Park;
 - ii. Existing structures screen the entire project from the view of a person in the Park; or
 - iii. Vegetation located on preserved land screens the entire project from the view of a person in the Park during the winter season.
- (b) Projects may be waived from the setback requirement if a divided highway exists between the Park and the project site if the Commission determines that the road and its traffic create a sufficient barrier to the visual impact of the project.
- (c) Projects may be waived from the setback requirement if they are additions to a pre-existing nonconforming structure and the Commission determines that the proposed addition will not further impose on the character of the Park.
- (d) The Commission may require additional restrictions, conditions, or special compensatory measures that mitigate waiver of strict adherence to the review procedure as outlined in N.J.A.C. 7:45-10.3.

7:45-12.8 Waiver of reconstruction or minor alteration review

Government and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from strict compliance with the Commission's standards if the applicant establishes to the satisfaction of the Commission that the project consists solely of the reconstruction of a previously existing structure that was partially destroyed by fire, flood, or other natural disaster, and that the reconstruction will not increase the use or the exterior dimensions of the structure. For projects within Zone A, reconstruction must not alter the appearance of the structure prior to the natural disaster. Structures that are totally destroyed by such natural disasters are not eligible for waiver.

7:45-12.9 Exclusivity of waiver

Waiver of review for a specific impact of a governmental or private project does not constitute a waiver of review for any other impact pursuant to this chapter.