

ARTICLE 12 - WAIVERS

12.1 Waivers of Certain Submission Requirements Authorized.

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature, it may waive portions of the submission requirements, unless prohibited by these regulations or Maine statutes, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning ordinance, or these regulations.

12.2 Waivers of Certain Improvements Authorized.

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning

This section allows the review authority to waive submission of information otherwise required by the regulations when that information is not necessary to make a determination that the standards of the regulations and the criteria of the statute are met. The applicant retains the burden of proof that the standards and criteria are met. There may be instances where the information required by the regulations is not the most appropriate to demonstrate compliance with the regulations and some other information may be better suited.

This section allows the review authority to waive required improvements where they may not be appropriate, even though called for in the regulations. For instance it may not make sense to install sidewalks in a subdivision if there are no other sidewalks to which they would connect. If the municipality's capital investment plan has not identified construction of sidewalks into that neighborhood as a municipal priority, the review authority may be justified in not requiring sidewalks. Local adaptation of the regulations during the adoption process should prevent inconsistencies like this. Please note that the *Model* does not suggest allowing the performance standards to be waived and that the review authority has no power to waive any of the statutory criteria.

ordinance, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.

12.3 Waiver of Procedural Steps

The Board may allow an applicant to combine the final plan and preliminary plan application steps into one procedure, upon making all of the following written findings of fact:

1. No new streets are proposed;
2. No approvals are required from the Maine Department of Environmental Protection under the Site Location of Development Act, Stormwater Law, or Natural Resources Protection Act, other than a "Permit by Rule;"
3. The Board agrees to approve a waiver from the requirement to submit a stormwater management plan and sedimentation and erosion control plan, as ordinarily required by sections 6 or 7; and
4. The application contains all other applicable submissions required for both the preliminary and final plan steps, except for those items for which a waiver of a required submission has been requested and granted.

12.4 Conditions for Waivers.

Waivers may only be granted in accordance with Sections 13.1, 13.2 and 13.3. When granting waivers, the Board shall set conditions so that the purposes of these regulations are met.

Commentary

12.5 Waivers to be shown on final plan.

When the Board grants a waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

The state statute (Title 30-A M.R.S.A., §4406, sub-§1.B) requires that when approval is based in part on the granting of a variance from a subdivision standard ~~that~~ fact shall be expressly noted on the face of the subdivision plan to be recorded.+ The variance is not valid unless recorded within 90 days. To avoid confusion with a zoning variance, the *Model* has used the term waiver. Neither waiving submission requirements, nor waiving the final plan step requires a note on the plan, because the applicable standard must still be met.