

## Legislation Text

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**File #:** 21-1303, **Version:** 1

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**PRESENTER:**

Applicant: MBC Engineers (Robert Copeland Jr.)

Owner: James Japhet

**SUBJECT:**

WVR21-401, WVR21-402 and WVR21-403 Discuss and consider waivers to Section 118-51(g) to allow an island subdivision surrounded by the 100-year floodplain; Section 118-51(f)(3)b to not designate the floodway as a drainage easement; and Section 118-45(b) to not require lot frontage to a public street, for the proposed replat of Lot 19R, Block 14, Long Creek Subdivision, Phase 2C.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** Outside City Limits

**BACKGROUND INFORMATION:**

Applicant: MBC Engineers (Robert Copeland Jr.)

1035 Central Parkway North

San Antonio, TX 78232

(21) 545-1122 despinosa@mbcengineers.com

Owner: James Japhet

3216 Shavano Park, TX 78231

(210) 448-0800 jhjaphet@yahoo.com

Staff Contact: Matt Greene

(830) 221-4053 mgreene@nbtexas.org

Lot 19R, Block 14, Long Creek Subdivision, Phase 2C is comprised of 9.262 acres located at the southern terminus of Bandit Beach Rd. adjacent to Lake Dunlap near The Bandit Golf Course, outside city limits, in the ETJ in Guadalupe County.

Long Creek Subdivision, Unit 2C was previously platted as 20 single-family residential lots, greenbelt lots and a private road extension of Bandit Beach Rd, but never developed. Unit 2C was replatted into the current single lot in 2015 (see attached Current Plat of Lot 19R, Block 14, Long Creek Subdivision, Phase 2C). The owner would like to replat the single lot into 4 single-family residential lots but cannot meet all the requirements of the Subdivision Platting Ordinance with the proposed lot layout and is requesting 3 separate Subdivision Platting waivers.

Access to Subdivision:

**The applicant is requesting a waiver to allow a new “island” subdivision where lots and streets would be surrounded by the floodwater of the 100-year floodplain.**

Section 118-51(g) of the Subdivision Platting Ordinance prohibits new “island” subdivisions, lots or streets that would be surrounded by the floodwater of the 100-year floodplain (one percent annual chance flood) unless it fulfills the following requirements:

- (1) The area is accessible to high ground by a street elevated above the one percent annual chance flood level.
- (2) The evidence presented shows that the surface area and elevation of the "island" is sufficient to sustain the residents safely during a .75 percent annual chance flood.

The replat of Long Creek Phase 2 was approved in 2014 with the same exception to the no new “island” subdivision requirement, as the replat of the subdivision reduced the number of residential lots within the 100-year floodplain and floodway from 20 to 1. The owner has since constructed a single-family residence on the lot in compliance with existing floodplain and floodway construction requirements per Guadalupe County regulations. The proposed replat to add three additional lots is triggering compliance with the Subdivision Platting Ordinance with respect to Section 118-51(g).

Section 118-51(g) provides two requirements to permit “island” subdivisions, and the written justification letter (attached) provided by the applicant does not include sufficient evidence to meet the requirements. None of the proposed lots have access to a public or private street that leads to a high ground area above the 100-year floodplain Base Flood Elevation. No evidence was presented showing the surface area and elevation of the “island” is sufficient to sustain the residents safely during a 0.75 percent annual chance flood. In addition, this subdivision does not meet the criteria associated with the definition of “island” subdivision presented in the code of ordinances. An “island” subdivision is an area above and surrounded by the 100-year floodplain. The subdivision in question is completely within the 100-year floodplain with the majority of the land also being within the floodway.

#### Floodway - Drainage Easement:

**The applicant is requesting a waiver to not designate the existing floodway as a drainage easement.**

Section 118-51(f)(3)b of the Subdivision Platting Ordinance requires areas where there is an approved and mapped floodway to designate a drainage easement(s) for the floodway. The applicant is requesting a waiver to not designate the floodway as a drainage easement.

The replat of Long Creek Phase 2 was approved in 2014 with the same exception to not require a portion of the floodway to be designated as a drainage easement. The owner submitted an approved flood study for the house that was proposed to be constructed at that time, indicating the home could be constructed in a particular area of the lot in compliance with existing floodplain and floodway construction requirements per Guadalupe County regulations. The entire lot, with the exception of a 110-foot by 110-foot building pad area, is currently designated as a drainage easement. The proposed replat to add three additional lots is triggering compliance with the Subdivision Platting Ordinance with respect to 118-51(f)(3)b.

Staff believes the reasons provided in the applicant’s written justification letter (attached) are not sufficient enough to consider approval of the waiver. The floodway is an area designated by FEMA to strongly discourage any type of development or land disturbance as development within the floodway highly increases the probability of adversely impacting downstream properties and drainage infrastructure. However, development is possible in the floodway as long as a no-rise/no-impact report is submitted proving the

proposed development will not cause any rise in water surface elevations upstream and downstream of the development. A report indicating compliance with floodplain and floodway construction requirements per Guadalupe County regulations was **not** submitted with this request.

Lot Frontage:

**The applicant is requesting a waiver to not require lots to front on a public street.**

Section 118-45(b) of the Subdivision Platting Ordinance requires each lot within a subdivision to front onto a dedicated, improved public street unless platted as an approved private street subdivision.

The existing platted lot currently has frontage on a public street (the terminus of Bandit Beach Rd.). Three of the four proposed lots to be replatted will not have frontage on a public street. The proposed lot with the owner's existing residence will be the only lot with public street frontage as it does currently. The three new lots are proposed to have access via a 50-foot wide access easement crossing all 4 lots. The access easement will have a compliant hammer head turnaround for Fire access at its terminus.

A public street could be constructed to City standards with a cul-de-sac or the proposed hammerhead turnaround, providing public street frontage to all proposed lots. However, the proposed lot configuration may have to be altered slightly to allow the cul-de-sac street design to not exceed the maximum allowed cul-de-sac length of 1,00 linear feet.

Staff believes the reasons provided in the applicant's written justification letter (attached) are not sufficient enough to consider approval of this waiver.

**ISSUE:**

All Subdivision Platting waiver requests must be considered by the Planning Commission.

The ordinance authorizes waivers to be granted when:

1. An undue hardship will result from strict compliance with the ordinance, or
2. When the purpose of the regulation may be served to a greater extent by an alternative proposal, so that substantial justice may be done, and the public interest is secured.

**Commission Findings:**

The adopted Subdivision Platting Ordinance indicates the Planning Commission shall not approve/recommend approval of a waiver unless it makes findings based upon the evidence presented to it in each specific case that:

1. Granting the waiver will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity.
2. Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; or an alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein; and
3. The waiver will not in any manner vary the provisions of the Zoning Ordinance or other ordinance(s) of the City.

In considering these waiver requests, the Planning Commission has four options:

1. To deny the waiver requests and require all standards of the Subdivision Platting Ordinance be met;
2. To approve the waiver requests with conditions;
3. To approve the waiver requests as presented; or
4. To deny, approve with conditions or approve as presented each waiver request individually.

**FISCAL IMPACT:**

Development in the floodway may cause an increase in peak flows and water surface elevations causing an adverse impact to downstream properties and public infrastructure such as, but not limited to, roads, culverts, low water crossings. Homes that would potentially be constructed on the 3 proposed lots would also be susceptible to flood damages.

**RECOMMENDATION:**

Denial. Staff believes the applicant's written justification letters are inadequate to justify granting approval of the waivers since they do not provide sufficient detail as to how the proposed waivers will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property.

**Resource Links:**

Section 118-11 - Waiver, of the City of New Braunfels Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIINGE\\_S118-11WA](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIINGE_S118-11WA)

Section 118-45(b) - Lots, of the City of New Braunfels Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-45LO](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-45LO)

Section 118-51(f)(3)b. - Water, Sewer and Drainage Facilities; Flood Hazards, of the City of New Braunfels Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-51WASEDRFAFLHA](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-51WASEDRFAFLHA)

Section 118-51(g) - Water, Sewer and Drainage Facilities; Flood Hazards, of the City of New Braunfels Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-51WASEDRFAFLHA](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-51WASEDRFAFLHA)

**Attachments:**

- Aerial Map
- Current Plat of Lot 19R, Block 14, Long Creek Subdivision, Phase 2C
- Applicant's Plat Waiver Justification Letters
- Applicant's Proposed Lot Layout