



## CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **July 26, 2022**  
Project: **Bariloche Waivers**  
Planner: Courtney McNair, Garver

### PLANNING COMMISSION AGENDA ITEM

# 1

## WAIVER REQUEST

Parcel #s: 830-37758-000 & 830-37758-001

**SUMMARY:** The applicant is requesting a Planned Unit Development and Preliminary Subdivision Plat approval for 139 lots: 136 single-family, 2 detention, and 1 common area, on 40.13 acres. The project is located on Klenc Road, approximately 3,300 feet south of Hwy. 412 / W. Henri de Tonti Blvd.

**CURRENT ZONING:** R-3 - Single-Family Residential - 9,600 square foot minimum lot size; provided density shall not exceed three (3) units/acre.

PUD Request to allow some lots to be less than 9,600 SF, and the overall density to be 3.9 units/acre.

**CITY WARD:** 3- Penny Baskin & Tim Buress

**FLOODPLAIN:** No

**INFRASTRUCTURE SERVICE AREAS** (not a guarantee of service availability):

**Water:** Tontitown Water

**Electric:** Ozarks Electric

**Sewer/Septic:** Tontitown Sewer

**Phone:** AT&T

**Natural Gas:** Black Hills Energy

**Cable:** Cox Communications

**School District:** Springdale

### PROJECT SYNOPSIS:

The applicant is requesting a Planned Unit Development and Preliminary Subdivision Plat approval for the Bariloche Subdivision which contains 139 lots: 136 single-family, 2 detention, and 1 common area, on 40.13 acres. The project is located on Klenc Road, approximately 3,300 feet south of Hwy. 412 / W. Henri de Tonti Blvd. The applicant is also requesting a Planned Unit Development in conjunction with the Preliminary Plat to allow some lots to be less than 9,600 SF, and the overall density to be 3.9 units/acre.

This property is owned by Infas Corporation, Inc., and located within the City Limits of Tontitown, with frontage along Klenc Road. The applicant is proposing to connect to the available stub out to the south, and has been requested to provide additional stub outs to the north. The site is currently undeveloped.

The applicant is requesting seven (7) waivers regarding the centerline radius, minimum slope of the detention pond, minimum pipe slope, street trees along Klenc Road, reduction of sidewalk width along Klenc, reduction of the local street section, and the drop inlet requirement:

- a. Waiver request from Chapter 90.400.2 to allow the subdivision roadway centerline radius to be reduced from 100 feet to 75 feet.
- b. Waiver request from the Drainage Criteria Manual required pond bottom (trickle channel) minimum slope of 0.5% to 0.25%.
- c. Waiver request from the Drainage Criteria Manual for the 0.4% minimum pipe slope (only where necessary) to 0.3% slope.
- d. Waiver request from Chapter 153.212, to not place trees along Klenc Road.
- e. Waiver request from Chapter 90.900.2, to reduce the sidewalk width along Klenc Road from 6 feet to 5 feet.
- f. Waiver request from Chapter 90.400.4 to reduce the local street typical section from 29 feet back of curb (BOC) to 27 feet back of curb (BOC).
- g. Waiver request from the Drainage Criteria Manual requirement for a 0.1' drop at inlets (only where necessary).

152.026 WAIVERS.

(A) *General.*

(1) *When, by the strict interpretation of these regulations, an applicant incurs undue restrictions on the physical property to be subdivided, a waiver for such requirements may be granted by the Planning Commission.*

(2) *Under no circumstance should a waiver be granted because of a personal hardship or for personal or emotional reasons. Waivers shall not be granted based strictly on financial hardship.*

(3) *A waiver is determined by the strict interpretation and enforcement of the rules and regulations upon a given piece of property to be subdivided.*

(B) *Procedures.*

(1) *No waiver shall be granted except upon written petition by the applicant when the application is filed. The petition shall state fully the grounds for the waiver and all the facts upon which the petition is made.*

(2) *In granting the waiver, the Planning Commission shall prescribe any conditions that it deems necessary to or desirable in the public interest.*

(3) *In considering the petition for a waiver, the Planning Commission shall take into account the nature of the proposed use of land involved, existing uses of land in the area, proximity to public utilities, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such waiver upon traffic conditions and upon the public health, safety and general welfare in the vicinity.*

(4) *The findings of the Planning Commission, together with the specific facts upon which findings are based, shall be incorporated into the official minutes of the Planning Commission meetings at which such waiver is granted. Waivers may be granted only when in harmony with the general purpose and intent of these regulations.*

## **WAIVER REQUEST A:**

**Waiver request from Chapter 90.400.2 to allow the subdivision roadway centerline radius to be reduced from 100 feet to 75 feet.**

- (a) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Applicant's Letter:** This is a local street. Reducing the centerline radius to 75 feet will help in slowing traffic.

**Staff's Response:** This is a common waiver request for internal subdivision streets, and may need to be a code amendment.

- (a) *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** Several recent subdivisions have received this waiver request.

- (b) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** Granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

### **STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the applicant's request from Chapter 90.400.2 to allow the subdivision roadway centerline radius to be reduced from 100 feet to 75 feet.

## **WAIVER REQUEST B:**

**Waiver request from the Drainage Criteria Manual required pond bottom (trickle channel) minimum slope of 0.5% to 0.25%.**

- (c) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Applicant's Letter:** The applicant states "This will help in keeping the volume as needed. Also, the slope going into this trickle channel (from the sides) shall exceed 0.5%. Please remember that the trickle channel, when in use, will be submerged.

**Staff's Response:** It is unclear why a slight change in grading could not achieve the grade and the volume required, however, the City Engineer does not have any major concern with this request.

- (b) *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** Without additional information from the applicant's engineer, it is unclear if this is achievable.

- (d) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** Granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

## **STAFF RECOMMENDATION:**

**Staff will present a recommendation at the Planning Commission meeting if additional information is received.**

## **WAIVER REQUEST C:**

**Waiver request from the Drainage Criteria Manual for the 0.4% minimum pipe slope (only where necessary) to 0.3% slope.**

- (e) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Applicant's Letter:** The applicant states that "the grades along Klenc Road are relatively flat. They ask that approval be granted to a reduction in the minimum pipe grade length from 0.4% to 0.3%. The design calculations show that this grade will work".

**Staff's Response:** The City Engineer has asked that this request be resubmitted to include only the grade change along Klenc Road, and no other areas of the property. More information is needed from the applicant as to whether there are any other areas with a reduction proposed.

- (c) *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** The grades are relatively flat in this area.

- (f) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** The City Engineer will need to review the revised drainage report. Additional conditions will need to be put in place to insure that granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

## **STAFF RECOMMENDATION:**

**Staff will present a recommendation at the Planning Commission meeting if additional information is received.**

If the Planning Commission chooses to grant this waiver, staff recommends the following condition:

1. The Project Engineer shall submit a drainage report and plans for review by the City Engineer. All minimum capacity, HGL, and full-flow velocity requirements shall be met. If the minimums cannot be met with the requested waiver, then the applicant shall be required to increase the drop in order to meet these standards.

## **WAIVER REQUEST D:**

**Waiver request from Chapter 153.212, to not place trees along Klenc Road.**

- (g) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Applicant's Letter:** The applicant states that this request would be consistent with the recently completed PUD south of and adjacent to the subject property.

**Staff's Response:** Non-conforming uses cannot be used as a reason to allow a waiver. The PUD to the south is not a precedent setting approval.

2. *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** No information was presented to show that this request is necessary for the property rights of the applicant.

- (h) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** Granting this waiver could be detrimental to the public health, safety, and welfare in the area. Trees along pedestrian areas create safer areas with respite.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

### **STAFF RECOMMENDATION:**

Staff recommends **DENIAL** of the applicant's waiver request from Chapter 153.212, to not place trees along Klenc Road, as there has been no information submitted showing hardship that is unique to this site.

Staff will update if additional information is submitted.

## **WAIVER REQUEST E:**

Waiver request from Chapter 90.900.2, to reduce the sidewalk width along Klenc Road from 6 feet to 5 feet.

- (i) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Applicant's Letter:** The applicant states that this would be consistent with the recently completed PUD south of and adjacent to the subject property.

**Staff's Response:** Non-conforming uses cannot be used as a reason to allow a waiver. The PUD to the south is not a precedent setting approval.

- 3. *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** No information was presented to show that this request is necessary for the property rights of the applicant.

- (j) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** Granting this waiver could be detrimental to the public health, safety, and welfare in the area. Klenc Road is a major thoroughfare, and sidewalks should follow the same hierarchy as streets.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver could prevent the orderly subdivision or development of other land in the area. As adjacent properties develop, the city will expect to see the six (6) foot sidewalk along this side of Klenc Road.

### **STAFF RECOMMENDATION:**

Staff recommends **DENIAL** of the applicant's waiver request from Chapter 90.900.2, to reduce the sidewalk width along Klenc Road from 6 feet to 5 feet.

**However, if the request is amended to only include the portion of the sidewalk that is south of the southernmost street for this development, then staff would be in favor of that request. It is a short distance to have a transition. Everything north of the southernmost street intersection needs to be the required six (6) feet in width.**

## **WAIVER REQUEST F:**

**Waiver request from Chapter 90.400.4 to reduce the local street typical section from 29 feet back of curb (BOC) to 27 feet back of curb (BOC).**

- (k) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Staff's Response:** As this is a PUD, the applicant can choose to provide specifications for their lots, setbacks, and so on. Generally, the request for a smaller street section is related to that concept. Information was not provided from the applicant as to why this smaller section is necessary for the concept.

4. *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** Information was not provided.

- (l) *That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** Granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

- (d) *That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

### **STAFF RECOMMENDATION:**

**Staff will present a recommendation at the Planning Commission meeting if additional information is received.**

If the Planning Commission chooses to grant this waiver, staff recommends the following condition:

1. No parking is allowed on the street. No parking signage shall be installed by the developer.
2. The Project Engineer shall submit a drainage report and plans for review by the City Engineer. The inlet design shall be revised to meet the updated spread requirements.



## **WAIVER REQUEST G:**

**Waiver request from the Drainage Criteria Manual requirement for a 0.1' drop at inlets (only where necessary).**

- (m) That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.*

**Staff's Response:** No information for this waiver was received.

5. *That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

**Staff's Response:** No information for this waiver was received.

- (n) That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.*

**Staff's Response:** Granting this waiver may be detrimental to the public health, safety, and welfare in the area. Staff cannot evaluate this request at this time.

- (d) That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.*

**Staff's Response:** Granting this waiver could prevent the orderly subdivision or development of other land in the area. Staff cannot evaluate this request at this time.

### **STAFF RECOMMENDATION:**

**Staff will present a recommendation at the Planning Commission meeting if additional information is received.**

If the Planning Commission chooses to grant this waiver, staff recommends the following condition:

1. The Project Engineer shall submit a drainage report and plans for review by the City Engineer. All minimum capacity, HGL, and full-flow velocity requirements shall be met. If the minimums cannot be met with the requested waiver, then the applicant shall be required to increase the drop in order to meet these standards.

Site location:

