



Planning and Community  
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# DEVIATION REQUEST AND DECISION FORM

Updated: 6/26/2019

## PROJECT INFORMATION

Project Name : Mayberry Phase 1  
Schedule No.(s) : SF2219 (Filing 3)  
Legal Description : N1/2 of Sect 14, Township 14 S, Range 63 W of 6<sup>th</sup> P.M., El Paso County, Colorado

## APPLICANT INFORMATION

Company : Mayberry Communities, LLC  
Name : Scott Souders, PE  
 Owner  Consultant  Contractor  
Mailing Address : 3296 Divine Heights #208  
Colorado Springs, CO 80922  
Phone Number : (719) 922-2181  
FAX Number : n/a  
Email Address : scottsouders@mayberrycoloradosprings.com

## ENGINEER INFORMATION

Company : Same as above  
Name : Colorado P.E. Number : 61025  
Mailing Address :  
Phone Number :  
FAX Number :  
Email Address :

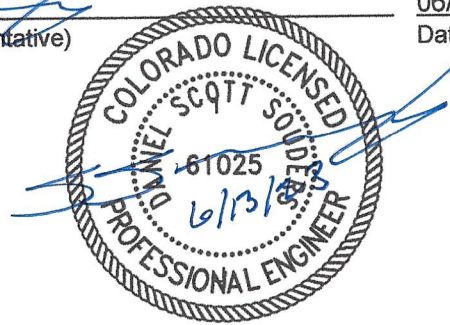
## OWNER, APPLICANT, AND ENGINEER DECLARATION

To the best of my knowledge, the information on this application and all additional or supplemental documentation is true, factual and complete. I am fully aware that any misrepresentation of any information on this application may be grounds for denial. I have familiarized myself with the rules, regulations and procedures with respect to preparing and filing this application. I also understand that an incorrect submittal will be cause to have the project removed from the agenda of the Planning Commission, Board of County Commissioners and/or Board of Adjustment or delay review until corrections are made, and that any approval of this application is based on the representations made in the application and may be revoked on any breach of representation or condition(s) of approval.

  
Signature of owner (or authorized representative) 06/13/2023  
Date

Engineer's Seal, Signature  
And Date of Signature

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**DEVIATION REQUEST** (Attach diagrams, figures, and other documentation to clarify request)

A deviation from the standards of or in **Section 2.3, Table 2-7, Footnote 3** of the Engineering Criteria Manual (ECM) is requested.

Identify the specific ECM standard which a deviation is requested:

2.3, Table 2-7, Footnote 3 states a Public Improvement Easement (PIE) is required adjacent to each right-of-way boundary when the right-of-way is less than 60' in width. Mayberry requests a deviation to the standard by not requiring the PIE for roadways within Filing 3.

State the reason for the requested deviation:

Mayberry Phase 1 PUD allows for a front yard setback of 10' from the right-of-way (ROW). In order to safely install franchise utility lines and associated above grade equipment, a minimum 8' utility easement is required along all lot frontages. This leaves only 2' between the edge of utility easement and the home foundation. This 2' separation is the minimum space required to safely construct the home foundation without exposing the franchise utility infrastructure.

During the review process of Filing 3, El Paso County (EPC) suggested a reduced PIE width to 2.5' where the ROW is established at 50'. Upon final review of the draft plat by the utility companies, it was discovered there would not be adequate space remaining within the overlapping 8' utility easement to install franchise utility infrastructure. Both Black Hills Energy (gas) and Mountain View Electric have requested to either remove the PIE or shift the utility easement, so it does not overlap. Shifting the utility easement will create conflict between the home foundations and the utility companies' infrastructure.

Explain the proposed alternative and compare to the ECM standards (May provide applicable regional or national standards used as basis):

Discussions with EPC engineering staff indicate the purpose of the PIE is to ensure adequate space is available to remove and replace sidewalk in the future. Mayberry Filing 3 specifies two different sidewalk orientations, detached (60' ROW) and attached (50' ROW). In the detached configuration, the 5' sidewalk is separated from the curb by 7' and from the ROW by 6". In the attached configuration, the 5' sidewalk is located tight to the curb and is separated from the ROW by 2.5'. See attached exhibit for illustrations of the typical sections.

Mayberry Communities believes adequate space is available within the ROW for both the attached and detached configurations to adequately maintain the sidewalk. Therefore, Mayberry Communities requests to deviate the standard by allowing for the omission of the PIE in all cases within Filing 3.

**LIMITS OF CONSIDERATION**

(At least one of the conditions listed below must be met for this deviation request to be considered.)

- The ECM standard is inapplicable to the particular situation.
- Topography, right-of-way, or other geographical conditions or impediments impose an undue hardship and an equivalent alternative that can accomplish the same design objective is available and does not compromise public safety or accessibility.
- A change to a standard is required to address a specific design or construction problem, and if not modified, the standard will impose an undue hardship on the applicant with little or no material benefit to the public.

Provide justification:

Mayberry Filing 3 is part of PUD Phase 1, allowing for a front yard setback of 10’ and utility easements running parallel to the right-of-way of 8’. Mayberry Communities (Developer) has worked diligently with the dry utility providers to successfully locate their respective utilities within the 8’ utility easement. However, the development standards of both the power and gas companies do not allow their utilities to be located within a Public Improvement Easement (PIE). Therefore, shifting the utility easement to create space for the PIE would effectively push the dry utilities into the allowable home setback area.

After discussions with EPC engineering staff, we understand the PIE for an urban development setting was thought to be necessary to service and replace the sidewalk. We’ve discussed that the road section within Mayberry’s 50’ ROW actually provides more room to maintain and replace the sidewalks than that provided in the 60’ ROW – see attached exhibit. Therefore, all parties agree that the PIE is not necessary for this particular condition and may be removed from the associated plat and construction drawings.

**CRITERIA FOR APPROVAL**

Per ECM section 5.8.7 the request for a deviation may be considered if the request is **not based exclusively on financial considerations**. The deviation must not be detrimental to public safety or surrounding property. The applicant must include supporting information demonstrating compliance with **all of the following criteria**:

The deviation will achieve the intended result with a comparable or superior design and quality of improvement.

Financial considerations are not the intent of this deviation request. The purpose of this deviation is to provide adequate space for all utility service providers while still maintaining adequate space to service and replace public sidewalks. See above justification for further description.

The deviation will not adversely affect safety or operations.

The deviation creates no increase or decrease to the general operational demands of the road system.

The deviation will not adversely affect maintenance and its associated cost.

This deviation request has no impact on road system maintenance or associated cost.

The deviation will not adversely affect aesthetic appearance.

This deviation request has no impact on aesthetics.

The deviation meets the design intent and purpose of the ECM standards.

This deviation does not adversely affect the design intent and purpose of the ECM standards.

The deviation meets the control measure requirements of Part I.E.3 and Part I.E.4 of the County's MS4 permit, as applicable.

The deviation has no effect on the County MS4 requirements.


**REVIEW AND RECOMMENDATION:**

**Approved by the ECM Administrator**

**Section 2.3, Table 2-7, Footnote 3**

This request has been determined to have met the criteria for approval. A deviation from Section \_\_\_\_\_ of the ECM is hereby granted based on the justification provided.

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<p><b>Approved</b> by Jeff Rice El Paso County Department of Public Works on behalf of Elizabeth Nijkamp, Deputy County Engineer</p>  <p>06/14/2023 10:04:52 AM</p>
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**Denied by the ECM Administrator**

This request has been determined not to have met criteria for approval. A deviation from Section \_\_\_\_\_ of the ECM is hereby denied.

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**ECM ADMINISTRATOR COMMENTS/CONDITIONS:**

## **1.1. PURPOSE**

The purpose of this resource is to provide a form for documenting the findings and decision by the ECM Administrator concerning a deviation request. The form is used to document the review and decision concerning a requested deviation. The request and decision concerning each deviation from a specific section of the ECM shall be recorded on a separate form.

## **1.2. BACKGROUND**

A deviation is a critical aspect of the review process and needs to be documented to ensure that the deviations granted are applied to a specific development application in conformance with the criteria for approval and that the action is documented as such requests can point to potential needed revisions to the ECM.

## **1.3. APPLICABLE STATUTES AND REGULATIONS**

Section 5.8 of the ECM establishes a mechanism whereby an engineering design standard can be modified when if strictly adhered to, would cause unnecessary hardship or unsafe design because of topographical or other conditions particular to the site, and that a departure may be made without destroying the intent of such provision.

## **1.4. APPLICABILITY**

All provisions of the ECM are subject to deviation by the ECM Administrator provided that one of the following conditions is met:

- The ECM standard is inapplicable to a particular situation.
- Topography, right-of-way, or other geographical conditions or impediments impose an undue hardship on the applicant, and an equivalent alternative that can accomplish the same design objective is available and does not compromise public safety or accessibility.
- A change to a standard is required to address a specific design or construction problem, and if not modified, the standard will impose an undue hardship on the applicant with little or no material benefit to the public.

## **1.5. TECHNICAL GUIDANCE**

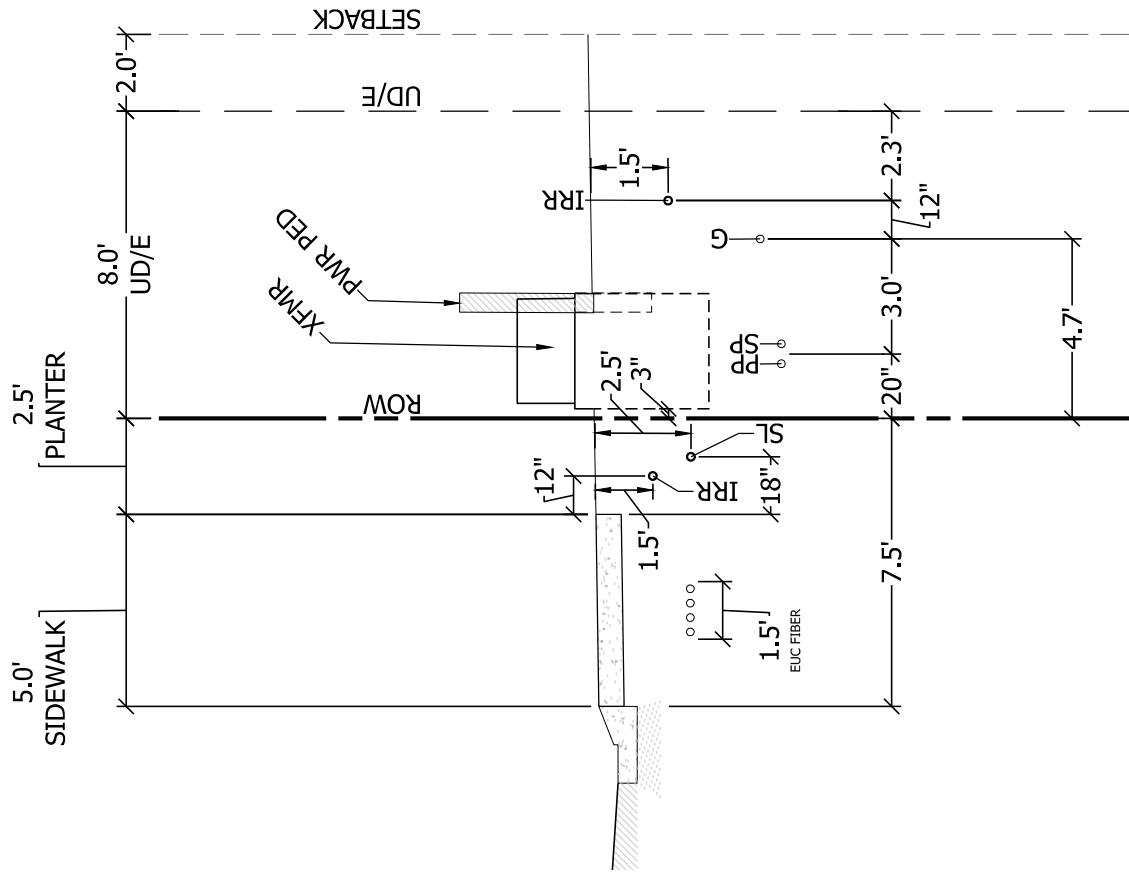
The review shall ensure all criteria for approval are adequately considered and that justification for the deviation is properly documented.

## **1.6. LIMITS OF APPROVAL**

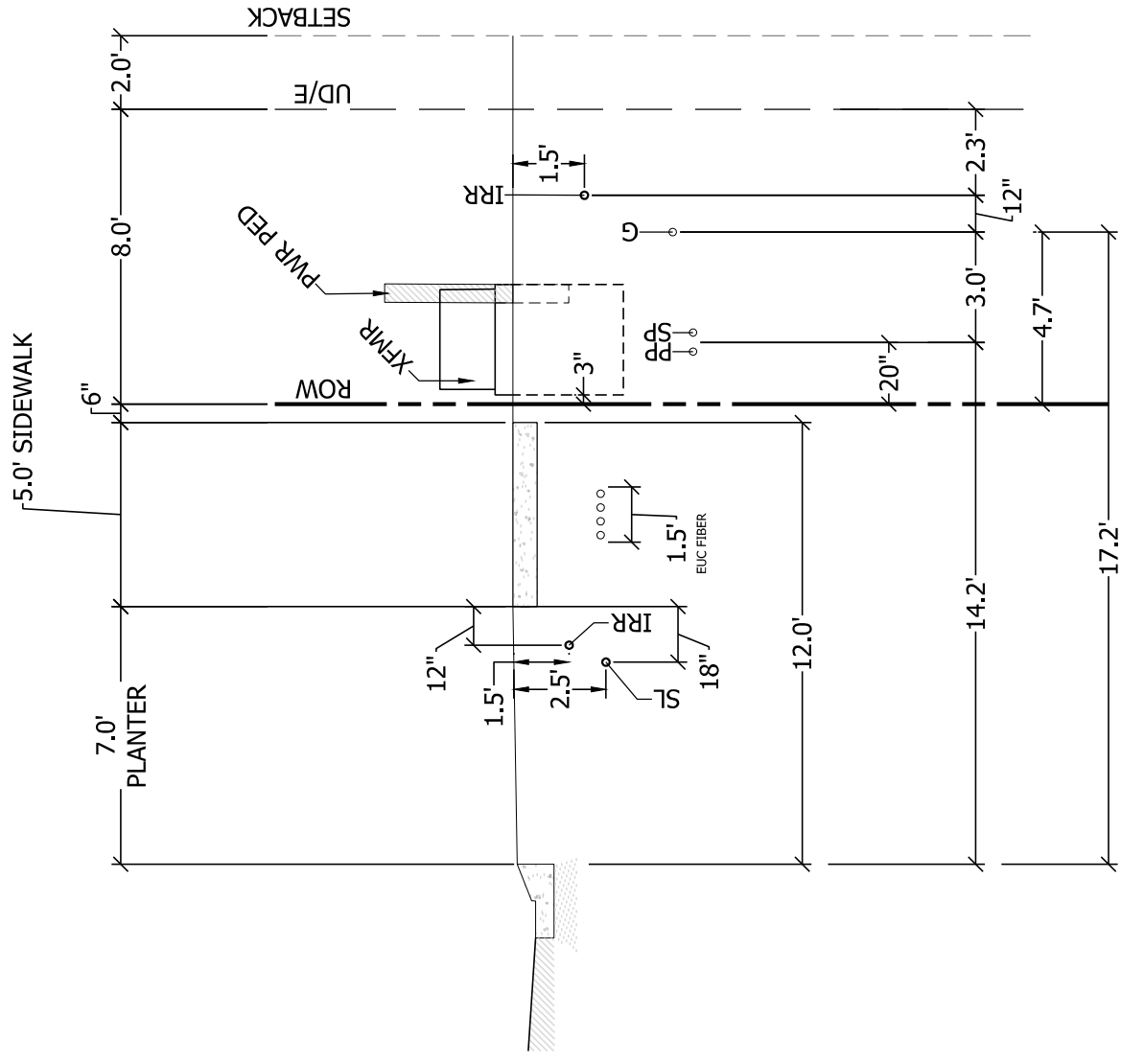
Whether a request for deviation is approved as proposed or with conditions, the approval is for project-specific use and shall not constitute a precedent or general deviation from these Standards.

## **1.7. REVIEW FEES**

A Deviation Review Fee shall be paid in full at the time of submission of a request for deviation. The fee for Deviation Review shall be as determined by resolution of the BoCC.



50' ROW - LOT ACCESS FRONTAGE  
1" = 5'



60' ROW - LOT ACCESS FRONTAGE  
1" = 5'