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Board of Zoning Appeals

Docket Date: August 2, 2018

Requests for Variances from the Sidewalk Ordinance

- CASE 2018-334 (Council District – 17)
- CASE 2018-343 (Council District – 09)
- CASE 2018-366 (Council District – 18)
- CASE 2018-375 (Council District – 24)
- CASE 2018-377 (Council District – 02)
- CASE 2018-379 (Council District – 34)
- CASE 2018-381 (Council District – 08)
- CASE 2018-385 (Council District – 01)
- CASE 2018-386 (Council District – 17)
- CASE 2018-393 (Council District – 21)
- CASE 2018-413 (Council District – 06)
- CASE 2018-414 (Council District – 05)
- CASE 2018-416 (Council District – 21)
- CASE 2018-417 (Council District – 21)

The following are recommendations from the Planning Department to the BZA for applicants for variances from the Sidewalk Ordinance which requires developers to install new sidewalks or make in-lieu fund contributions under certain conditions.

If the BZA applicant agrees with the recommendations of the Planning Department, their case will be eligible to be placed on the consent agenda for the meeting. If there is opposition present to the BZA application at the board meeting, the case will not be eligible for the consent agenda and will be heard in the order it was received.

Some of the BZA cases listed here may be withdrawn or deferred by the applicant prior to the meeting.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-334 (207 Mildred Shute Avenue)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Metro Local Street standard
Requested Variance:	Not upgrade sidewalk
Community Plan Policy:	T4 NE (Urban Neighborhood Evolving)
MCSP Street Designation:	Local Street
Transit:	Approximately 90' west of #52 – Nolensville Pike BRT Lite
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions.*

Analysis: The applicant proposes constructing a single family dwelling and requests a variance from upgrading sidewalks to the Metro Local Street standard due to the presence of an existing sidewalk along the frontage of the site. The property has an existing frontage width of approximately 47'. Planning evaluated the following factors for the variance request:

- (1) A 5' sidewalk with no grass strip currently exists along Mildred Shute Avenue for the entire block from 3rd Avenue South to 2nd Avenue South.
- (2) This area does not have an established grass strip within the existing sidewalks. On a Local Street, it is ideal to include a grass strip between 2' and 4' wide to accommodate signs, utility poles, and other potential obstructions. Given the BZA decision involving Case 2017-130, upgrading the sidewalk to include a grass strip is difficult with the approved setbacks.

Given the factors above, staff recommends **approval with conditions**:

1. The applicant shall contribute in-lieu of construction for the property frontage.
2. Prior to the issuance of building permits, dedicate right-of-way along the property frontage to accommodate future sidewalks per the Metro Local Street Standard where not precluded by the building footprint.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-343 (222 Myatt Drive)

Metro Standard:	4' grass strip, 8' sidewalk, as defined by the Major and Collector Street Plan
Requested Variance:	Not construct sidewalks, not contribute in-lieu of construction (eligible)
Community Plan Policy:	T4 CM (Urban Mixed Use Corridor)
MCSP Street Designation:	T4-M-AB4
Transit:	#27 – Old Hickory; #36X – Madison Express
Bikeway:	None existing; bike lanes planned

Planning Staff Recommendation: *Disapprove*

Analysis: The applicant is constructing a new single family structure on the property, and requests not to construct sidewalks or contribute in lieu due to the lack of existing sidewalks in the area. Per the Zoning Ordinance, the applicant is eligible to contribute in lieu of construction. Electing to make the contribution in lieu of construction supplements Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property, which is within one of Metro's sixteen pedestrian benefit zones. Staff finds no unique hardship for the property, as a sidewalk could be constructed on the site.

Given the factors above, staff recommends **disapproval as the applicant has the option to contribute in-lieu of constructing sidewalks.**

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-366 (2812 Hillside Drive)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Metro Local Street standard
Requested Variance:	Not construct sidewalks
Community Plan Policy:	T4 NM (Urban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	None existing; none planned
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Disapprove.*

Analysis: The applicant is constructing a single family dwelling, and requests a variance from constructing sidewalks due to the lack of existing sidewalks along the Hillside Drive block face. Per the Zoning Ordinance, the applicant is eligible to contribute in lieu of construction. Electing to make the contribution in lieu of construction supplements Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property, within one of Metro's sixteen pedestrian benefit zones. Staff finds no unique hardship for the property.

Given the factors above, staff recommends **disapproval as the applicant has the option to contribute in-lieu of construction.** The applicant shall also dedicate right-of-way for future sidewalk construction.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-375 (5533 and 5535 Kendall Drive)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Local Street Standard
Requested Variance:	Not upgrade sidewalks or contribute in-lieu (not eligible)
Community Plan Policy:	T3 NM (Suburban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	500' from #3 – White Bridge
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions*

Analysis: The applicant is constructing two new structures on the property replacing the existing home, and requests not to upgrade sidewalks due to existing sidewalks, disruption to the existing sidewalk network, as well as conflicts with an existing fire hydrant and water meters that would be in the path of the new sidewalks. Planning evaluated the following factors for the variance request:

- (1) 4' sidewalks with a 2' grass strip currently exist on the property frontage. This is consistent with the street and block face. The existing sidewalks shall be maintained in a state of good repair.
- (2) Ideally, a local street will include a 5' sidewalk and 4' grass strip to accommodate signs, utility poles, and other obstructions. In this instance, the sidewalk design is well-established, obstructions are all currently contained outside of the sidewalk, and the Local Street standard would place existing infrastructure in the sidewalk path. A contribution in-lieu of construction will supplement Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property.

Given the factors above, staff recommends **approval with conditions:**

1. The existing sidewalks shall be maintained in a state of good repair as deemed by Metro Public Works. Applicant shall make any necessary repairs to the existing sidewalks.
2. The applicant shall contribute in lieu of constructing an upgraded sidewalk design for the property frontage.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-379 (4019 Vailwood Drive)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Local Street Standard
Requested Variance:	Not upgrade sidewalks or contribute in-lieu (not eligible)
Community Plan Policy:	T3 NM (Suburban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	None existing; none planned
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions*

Analysis: The applicant is constructing a new single family structure on the property replacing the existing home, and requests not to upgrade sidewalks due to existing sidewalks and disruption to the existing sidewalk network. Planning evaluated the following factors for the variance request:

- (1) A 2' grass strip and 5' sidewalks currently exist on the property frontage. This is consistent with the street and block face.
- (2) Ideally, a local street will include a 5' sidewalk and 4' grass strip to accommodate signs, utility poles, and other obstructions. In this instance, the sidewalk design is well-established, obstructions are all currently contained outside of the sidewalk, and the Local Street standard would place existing mature trees and water infrastructure in the sidewalk path. A contribution in-lieu of construction will supplement Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property.

Given the factors above, staff recommends **approval with conditions:**

1. The applicant shall contribute in lieu of construction for the property frontage.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-381 (1024 West Kirkland Avenue)

Metro Standard:	4' grass strip, 5' sidewalk as defined by the Metro Local Street standard
Requested Variance:	Not construct sidewalks; not contribute in-lieu of construction (not eligible)
Community Plan Policy:	T4 TR (Urban Transition) CO (Conservation: stream buffer along the rear of site)
MCSP Street Designation:	Local Street
Transit:	Approximately 620' west of #26 – Gallatin Pike; Future High Capacity Transit per nMotion Plan
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions.*

Analysis: The applicant is constructing a front porch addition onto a converted residential structure for an existing insulation contracting business and requests not to construct sidewalks or contribute in lieu of construction.

Planning evaluated the following factors for the variance request:

- (1) A drainage ditch currently runs parallel to West Kirkland Avenue along the frontage of the property.
- (2) Because of the scale of the proposed improvements and the applicant is maintaining the existing structure for an office use, construction of sidewalks is premature. However, if more significant development occurs in the future, the need for sidewalks should be re-evaluated.

Given the factors above, staff recommends **approval with conditions:**

1. The applicant shall dedicate right-of-way along the West Kirkland Avenue frontage for future sidewalk construction to the Local Street standard.
2. If the site is redeveloped or sidewalks are triggered in the future, the redevelopment or site improvements shall incorporate appropriate site work to construct a sidewalk to current standards unless a new sidewalk variance is granted by the Board of Zoning Appeals.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-385 (3804 Fairview Drive)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Local Street Standard
Requested Variance:	Not construct sidewalks; not contribute in-lieu of construction (eligible)
Community Plan Policy:	T3 NM (Suburban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	500' from #22 - Bordeaux
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Disapprove*

Analysis: The applicant is constructing a new residential structure on the property, and requests not to construct sidewalks due to a lack of existing sidewalks in the area. Planning evaluated the following factors for the variance request:

- (1) No sidewalks currently exist on the property frontage. Staff finds no unique hardship for the property.
- (2) Per the Zoning Ordinance, the applicant is eligible to contribute in lieu of construction. Electing to make the contribution in lieu of construction supplements Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property, within one of Metro's sixteen pedestrian benefit zones. Staff finds no unique hardship for the property.

Given the factors above, staff recommends **disapproval**. **The applicant shall build sidewalks or contribute in-lieu of constructing sidewalks along the property frontage.**

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-386 (1812 Beech Avenue)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Metro Local Street standard
Requested Variance:	Not upgrade sidewalks; contribute in-lieu of construction (not eligible)
Community Plan Policy:	T4 NM (Urban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	Approximately 708' from #8 – 8 th Avenue South
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions.*

Analysis: The applicant proposes constructing a single family dwelling and requests a variance to contribute in-lieu of upgrading sidewalks along the property's Beech Avenue frontage. Planning evaluated the following factors for the variance request:

- (1) A 2' grass strip and 5' sidewalk exists along Beech Avenue. On a Local Street, a slightly narrower grass strip is an acceptable alternative design to accommodate utilities and still provide a safety buffer between traffic and pedestrians.

Given the factors above, staff recommends **approval with conditions:**

1. The applicant shall contribute in-lieu of construction for the property frontage.
2. Prior to the issuance of building permits, dedicate right-of-way along the Beech Avenue property frontage to accommodate future sidewalks per the Metro Local Street standard.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-393 (214 Reidhurst Avenue)

Metro Standard:	Reidhurst Avenue – 4' grass strip, 5' sidewalk, as defined by the Metro Local Street Standard
	Brandau Place – 4' grass strip, 5' sidewalk, as defined by the Metro Local Street Standard
Requested Variance:	Not upgrade sidewalks
Community Plan Policy:	T5 MU (Center Mixed Use Neighborhood)
MCSP Street Designation:	Reidhurst Avenue – Local Street
	Brandau Place – Local Street
Transit:	Approximately 856' from #3 West End/White Bridge and #5 West End/Bellevue; Future High Capacity Transit per nMotion Plan
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions.*

Analysis: The applicant proposes constructing an approximately 5,100 square foot building addition for an existing caregiver and nursing home and requests a variance from upgrading sidewalks due to the presence of existing sidewalks along both frontages of the site. Planning evaluated the following factors for the variance request:

- (1) A 2' grass strip and 5' sidewalk currently exists along the Reidhurst Avenue frontage of the existing facility. While the existing grass strip is 2' narrower than the required grass strip, it is consistent with the entire block face.
- (2) A 6' sidewalk currently exists along the property's frontage with Brandau Place with no grass strip, which terminates at the ingress/egress of alley #924.
- (3) The sidewalks at the intersection do not include a truncated dome for ADA accommodations.

Given the factors above, staff recommends **approval with conditions:**

1. Prior to the issuance of building permits, dedicate right-of-way along the Reidhurst Avenue and Brandau Place property frontages to accommodate future sidewalks per the Metro Local Street standard.
2. Coordinate with Metro Public Works with regards to the addition of truncated domes at the pedestrian curb ramp located at the intersection of Brandau Place and Reidhurst Avenue to ensure ADA compliance.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-413 (912 Main Street)

Metro Standard:	4' grass strip, 10' sidewalk, as defined by the Major and Collector Street Plan
Requested Variance:	Not upgrade sidewalks
Community Plan Policy:	T4 CM (Urban Mixed Use Corridor)
MCSP Street Designation:	T4-M-AB4-IM
Transit:	#26/#56 Gallatin BRT Lite; Future High Capacity Transit per nMotion Plan
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Approve with conditions.*

Analysis: The applicant proposes to repurpose an existing storage building as a new bar and requests to not upgrade the existing sidewalks along their property frontage. An 8' sidewalk currently exists on the entire frontage of the property, with no grass strip, which is consistent with the entirety of the block face from South 9th Street to McFerrin Avenue. The existing structure is located approximately 25' from the back of the current sidewalk. The applicant's redevelopment plan shows an outdoor dining area between the existing building and the existing back of sidewalk. The proposed development is located within the East Bank MDHA redevelopment district and was approved in concept by MDHA at its June 5th, 2018 meeting. A second review of proposed materials and landscaping is forthcoming.

Planning evaluated the following factors for the variance request:

- (1) The property fronts Main Street, identified as a future high capacity transit corridor in nMotion. While the existing 8' sidewalk with no grass strip does not meet the Arterial-Boulevard standard set in place by the Major and Collector Street Plan, the Main Street frontage along contiguous properties is constrained as a result of neighboring mixed use buildings being placed adjacent to the back of the sidewalk.
- (2) The applicant is proposing to repurpose an existing storage building with a new structure and patio enclosure. The enclosure is proposed to be setback 8' from the back of the existing sidewalk.

Given the factors above, staff recommends **approval with conditions:**

- (1) The applicant shall contribute in-lieu of construction for the property frontage.
- (2) Prior to the issuance of building permits, dedicate right-of-way along the Main Street property frontage to accommodate future sidewalks per the Major and Collector Street Plan standard.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-414 (220 and 222 Duke Street)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Local Street Standard
Requested Variance:	Not construct sidewalks; not contribute in-lieu of construction (eligible)
Community Plan Policy:	T4 NM (Urban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	¼ mile from #43 – Hickory Hills
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Disapprove*

Analysis: The applicant is constructing two new residential structures on the property, and requests not to construct sidewalks due to storm water concerns and concerns about a gap in paving between the required MCSP sidewalks and the edge of pavement. Planning evaluated the following factors for the variance request:

- (1) No sidewalks currently exist on the property frontage. Staff finds no unique hardship for the property.
- (2) Public Works has indicated that the existing pavement gap is not an impediment to sidewalk construction or connectivity because the applicant will also be required to construct curb and gutter.
- (3) The existing stormwater infrastructure along Duke Street is typical for residential streets. Metro Water Services has indicated that constructing sidewalks along this frontage would involve typical stormwater infrastructure with the sidewalk construction.
- (4) Per the Zoning Ordinance, the applicant is eligible to contribute in lieu of construction. Electing to make the contribution in lieu of construction supplements Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property, within one of Metro's sixteen pedestrian benefit zones. Staff finds no unique hardship for the property.

Given the factors above, staff recommends **disapproval**. **The applicant shall build sidewalks or contribute in-lieu of constructing sidewalks along the property frontage.**

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-416 (3168 Parthenon Avenue)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Metro Local Street standard
Requested Variance:	Not upgrade sidewalks; not contribute in-lieu of construction (eligible)
Community Plan Policy:	T4 NE (Urban Neighborhood Evolving)
MCSP Street Designation:	Local Street
Transit:	Approximately 0.3 miles to #21 – University Connector
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Disapprove.*

Analysis: The applicant is constructing two duplex family dwellings, and requests a variance from upgrading sidewalks due to the presence of existing sidewalks along the Parthenon Avenue block face. Per the Zoning Ordinance, the applicant is eligible to contribute in lieu of construction. Electing to make the contribution in lieu of construction supplements Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property, within one of Metro's sixteen pedestrian benefit zones. Staff finds no unique hardship for the property.

Given the factors above, staff recommends **disapproval as the applicant has the option to contribute in-lieu of construction.** The applicant shall also dedicate right-of-way for future sidewalk construction.

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

BZA Case 2018-417 (4313 Albion Street)

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Local Street Standard
Requested Variance:	Not upgrade sidewalks or contribute in-lieu (not eligible)
Community Plan Policy:	T3 NM (Suburban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	200' from #19 – Herman
Bikeway:	Bike Boulevard planned per WalknBike plan

Planning Staff Recommendation: *Disapprove*

Analysis: The applicant is constructing a two-story office building, and requests not to upgrade sidewalks due to unique characteristics of the lot. Planning evaluated the following factors for the variance request:

- (1) No sidewalks currently exist on the property frontage. The area currently generates pedestrian traffic, which will increase as redevelopment occurs.
- (2) Staff finds no unique physical hardship that would prevent sidewalk construction.

Given the factors above, staff recommends **disapproval**. **The applicant shall construct sidewalks or an alternative sidewalk design reviewed by Planning and Public Works per the Metro Local Street standard.**

APPENDIX

Sidewalk Guidelines

General Requirements

1. Construction of new sidewalks is required along the entire lot frontage unless, a portion of the frontage abuts a proposed sidewalk segment that Public Works has funded and scheduled for construction.
2. Dimensions shall comply with the Major and Collector Street Plan and Public Works design standards.
3. Obstructions are prohibited within the pedestrian travel way.
4. Driveways, walkways, and other improvements shall be designed to accommodate future sidewalk construction where a planned sidewalk is identified in the Strategic Plan for Sidewalks and Bikeways.
5. Dedication of Rights-of-Way is required as needed:
 - a. with the construction of sidewalks,
 - b. with a contribution in-lieu of construction,
 - c. with permits for one or two family additions, or any renovation with a cost equal to or greater than 25% of the assessed value.

Multi-Family or Non-Residential Properties

Sidewalks are required when lots are:

1. Redeveloped.
2. New Development is on a vacant lot.
3. Renovation Cost is equal to or greater than 50% of the assessed value of all structures on the lot, or the value of multiple renovations during any five-year period equal or greater than 75% of the assessed value of all structures on the lot.
4. Expansion Cost is equal or greater than 25% of the assessed value of all structures on the lot, or the value of multiple expansions during a five- year period is equal to or greater than 50% of the assessed value of all structures on the lot.
5. Expansion Square Foot is equal or greater than 25% of the total square foot of all structures on the lot, or the total square foot of multiple expansions during a five- year period is equal to or greater than 50% of the total square foot of all structures on the lot.

And any of the following are met:

1. The property is within the Urban Services District.
2. Within a Center designated in the General Plan.
3. Within a quarter mile of a Center designated in the General Plan, unless the property is on the opposite side of a river or access controlled highway from a center.
4. On a street in the Major and Collector Street Plan.

New Single Family or Two-family Construction

Sidewalks are required when lots are:

1. Within the Urban Zoning Overlay.
2. Within a Center designated in the General Plan.
3. Within a quarter mile of a Center designated in the General Plan, unless the property is on the opposite side of a river or access controlled highway from a center.
4. On a street in the Major and Collector Street Plan.

In-Lieu Fee is Not Applicable

1. When there is an existing sidewalk in need of repair or replacement.
2. Existing sidewalk present on the same block face.
3. Multi-family or Non-Residential Properties within the Urban Zoning Overlay.
4. Multi-Family or Non-Residential Properties along a street in the Major and Collector Street Plan.
5. If a portion of the proposed sidewalk segment abuts a proposed sidewalk segment that Public Works has funded and scheduled for construction.

**For additional information, see Third Substitute Ordinance No. BL2016-493
(http://www.nashville.gov/mc/ordinances/term_2015_2019/bl2016_493.htm)**