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### **Board of Zoning Appeals**

Docket Date: August 16, 2018

#### **Requests for Variances from the Sidewalk Ordinance**

- CASE 2018-316 (Council District 20)
- CASE 2018-366 (Council District 18)
- CASE 2018-381 (Council District 8)
- CASE 2018-417 (Council District 21)
- CASE 2018-422 (Council District 24)
- CASE 2018-424 (Council District 19)
- CASE 2018-429 (Council District 8)
- CASE 2018-433 (Council District 34)
- CASE 2018-434 (Council District 17)
- CASE 2018-435 (Council District 34)
- CASE 2018-436 (Council District 2)
- CASE 2018-444 (Council District 22)

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Some of the BZA cases listed here may be withdrawn or deferred by the applicant prior to the meeting.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 2018-316 (439 West Bend Drive)

|                          |  |
|--------------------------|--|
| Metro Standard:          | West Bend Drive - 4' grass strip, 5' sidewalk, as defined by the Metro Local Street standard |
|                          | Obrien Avenue – 4' grass strip, 5' sidewalk, as defined by the Metro Local Street standard   |
| Requested Variance:      | Not build sidewalks  |
| Community Plan Policy:   | T3 NM (Suburban Neighborhood Maintenance)  |
| MCSP Street Designation: | West Bend Drive - Local Street   |
|                          | Obrien Avenue – Local Street   |
| Transit:                 | Approx. ¼ mile from #10 – Charlotte  |
| Bikeway:                 | None existing; none planned  |

### Planning Staff Recommendation: *Disapprove.*

**Analysis:** The applicant proposes constructing a single family home on the property and requests a variance from constructing sidewalks because of topography and impacts to storm water infrastructure, specifically a ditch that runs along the Obrien Avenue frontage.

Planning evaluated the following factors for the variance request:

- (1) The ditch along Obrien Avenue is typical for residential streets, and the existing cross drain is typical for corner lots. Metro Water Services has confirmed the property is appropriate for sidewalk construction.
- (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, 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. The applicant shall build sidewalks or contribute in-lieu of constructing sidewalks along the property frontages.**

## 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 2018-381 (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)<br>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 2018-417 (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.**

## PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

### BZA Case 2018-422 (108 39<sup>th</sup> Avenue North)

|                          |  |
|--------------------------|--|
| 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 39<sup>th</sup> Avenue North 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 2018-424 (1825 A&B 4<sup>th</sup> Avenue North)

|                          |  |
|--------------------------|--|
| Metro Standard:          | 4' grass strip, 5' sidewalk, as defined by the Local Street Standard         |
| Requested Variance:      | Not upgrade sidewalks; not contribute in-lieu of construction (not eligible) |
| Community Plan Policy:   | T4 NM (Urban Neighborhood Maintenance)                                       |
| MCSP Street Designation: | Local Street   |
| Transit:                 | 500' from #9 – MetroCenter   |
| 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 topography and an existing retaining wall at the back of sidewalks. Planning evaluated the following factors for the variance request:

- (1) A 5' sidewalk with no grass strip exists along the property frontage. This is consistent with the street and block face.
- (2) Ideally, a local street will include a 4' grass strip and 5' sidewalk 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. Maintain existing sidewalk conditions in a state of good repair per Public Works final guidance. Any portion of the existing sidewalk along the property frontage that is not ADA compliant is to be removed and replaced in-kind with MPW Detail ST-210 sidewalk.
2. The applicant shall contribute in lieu of construction for the property frontage.
3. 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.

## PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

### BZA Case 2018-429 (1017 Curdwood Boulevard)

|                          |  |
|--------------------------|--|
| 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 NM (Urban Neighborhood Maintenance)<br>CO (Conservation: floodplain)        |
| MCSP Street Designation: | Local Street   |
| Transit:                 | Approximately 411' west of #26 – Gallatin Pike                                 |
| Bikeway:                 | None existing; none planned  |

### Planning Staff Recommendation: *Approve with conditions.*

**Analysis:** The applicant proposes to renovate an existing, non-conforming triplex and requests a variance from constructing sidewalks to the Metro Local Street standard due to the lack of existing sidewalks along the Curdwood Boulevard block face. Planning evaluated the following factors for the variance request:

- (1) No sidewalk or grass strip currently exists along the property's frontage with Curdwood Boulevard which is consistent across the entire block face from Gallatin Pike to Burns Street.
- (2) The applicant proposes to provide exterior rehab and renovations to their existing legal non-conforming triplex with regards to elevation improvements and material retrofits. No expansions to the existing household or increases in number of units are associated with the request.
- (3) Since this is a non-conforming triplex, Metro Code classifies the use as Multi-family Residential, so the applicant is not eligible to contribute in-lieu of construction per the Code.

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.



## PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

### BZA Case 2018-433 (3938 Cross Creek Road)

|                          |   |
|--------------------------|---|
| Metro Standard:          | Cross Creek Road - 4' grass strip, 5' sidewalk, as defined by the Local Street Standard<br>Warfield Lane - 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: | Cross Creek Road - Local Street<br>Warfield Lane - Local Street   |
| Transit:                 | ¼ mile from #2 – Belmont; #21 – University Connector  |
| Bikeway:                 | Cross Creek Road - None existing; none planned<br>Warfield Lane – Bike Boulevard per WalknBike plan   |

### 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 construct sidewalks or contribute in-lieu of construction due to lack of existing sidewalks on both street frontages, impacts to existing ditches on both frontages, as well as lack of future connectivity on Warfield Lane. Planning evaluated the following factors for the variance request:

- (1) No sidewalks currently exist on the property frontages. However, the community plan policy for the adjacent properties is classified as a T5 Regional Center, which supports more residential and employment densities with increased pedestrian activity. Improving the area's sidewalk connectivity is important in supporting this land use policy.
- (2) The ditch along Cross Creek Road and Warfield Lane is typical for residential streets. Metro Water Services has confirmed that sidewalk construction is feasible.
- (3) Warfield Lane east of the property is gated prohibiting connectivity to the YMCA property. A sidewalk connection is likely not feasible without significant coordination and discussions with the YMCA and modifications to their fencing. Without those assurances in this location, a sidewalk along the Warfield Lane frontage would not provide for future connectivity.
- (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, 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 **approval with conditions:**

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

## PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

### BZA Case 2018-434 (1427 & 1429 14<sup>th</sup> Avenue South)

|                          |  |
|--------------------------|--|
| 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 (not eligible) |
| Community Plan Policy:   | T4 NM (Urban Neighborhood Maintenance)                                       |
| MCSP Street Designation: | Local Street   |
| Transit:                 | Approximately 0.2 miles from #17 – 12 <sup>th</sup> Avenue South             |
| Bikeway:                 | None existing; none planned  |

### Planning Staff Recommendation: *Approve with conditions.*

**Analysis:** The applicant proposes to construct a two-family dwelling and requests a variance due to the presence of existing sidewalks along the 14<sup>th</sup> Avenue South property frontage. Planning evaluated the following factors for the variance request:

- (1) A 2' grass strip and 5' sidewalk exists along 14<sup>th</sup> Avenue South. 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. Maintain existing sidewalk conditions in a state of good repair per Public Works final guidance. Any portion of the existing sidewalk along the property frontage that is not ADA compliant is to be removed and replaced in-kind with MPW Detail ST-210 sidewalk.
2. The applicant shall contribute in-lieu of construction for the property frontage.
3. 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.

## PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

### BZA Case 2018-435 (100 Taggart Avenue)

|                          |   |
|--------------------------|---|
| Metro Standard:          | Highway 100 - 6' grass strip, 8' sidewalk, as defined by the Major and Collector Street Plan Standard |
|                          | Taggart Avenue - 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: | Highway 100 – T3-M-AB4  |
|                          | Taggart Avenue - 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 construct sidewalks due to lack of existing sidewalks on both street frontages, impacts to existing ditches on both frontages, as well as topography on Highway 100. Planning evaluated the following factors for the variance request:

- (1) The ditch along the property's Taggart Avenue frontage is typical for residential streets. Metro Water Services has confirmed that sidewalk construction is feasible.
- (2) The topography along the property's Highway 100 frontage is challenging, and this condition is a significant hardship given the scale of proposed improvements.

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

1. The applicant shall contribute in-lieu of construction for the Taggart Avenue property frontage.
2. Prior to the issuance of building permits, dedicate right-of-way along both property frontages to accommodate future sidewalks per the Major and Collector Street Plan and Metro Local Street standards, respectively.

## PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION

### BZA Case 2018-436 (2319 Woodridge Drive)

|                          |  |
|--------------------------|--|
| 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 (eligible) |
| Community Plan Policy:   | T3 NM (Suburban Neighborhood Maintenance)                                  |
| MCSP Street Designation: | Local Street   |
| Transit:                 | Approximately 391' south of #41 – Golden Valley                            |
| Bikeway:                 | None planned; none existing  |

### 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 and topography along the Woodridge 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 2018-444 (7647 Sawyer Brown Road)

|                          |   |
|--------------------------|---|
| Metro Standard:          | 6' grass strip, 6' sidewalk, as defined by the Major and Collector Street Plan  |
| Requested Variance:      | Not construct sidewalks   |
| Community Plan Policy:   | T3 NM (Suburban Neighborhood Maintenance)<br>CO (Conservation: slopes interior to site and adjacent floodplain north of site) |
| MCSP Street Designation: | T3-R-CA2  |
| Transit:                 | None existing; none planned   |
| Bikeway:                 | None existing; none planned   |

### Planning Staff Recommendation: *Approve with conditions.*

**Analysis:** The applicant is constructing a new religious institution structure on the property, and requests not to construct sidewalks due to topography on the site, as well as impacts to existing ditches and mature trees on the property frontage. Planning evaluated the following factors for the variance request:

- (1) No sidewalks currently exist along this portion of Sawyer Brown Road.
- (2) Metro Code classifies construction related to a religious institutional use as Commercial or Non-Residential construction, so the applicant does not have the option to contribute in-lieu of constructing sidewalks along a street identified as a Collector-Avenue in the Major and Collector Street Plan.
- (3) Although this property is identified as Suburban Neighborhood Maintenance which supports primarily residential uses in a suburban development pattern, this portion of Sawyer Brown Road is built with a rural ditch cross section. A floodplain is identified north of the property and topography is significant throughout this portion of Sawyer Brown Road north and south of the site. In this setting with the mature trees and ditches, upgrading the property frontage with an urban sidewalk cross section is significantly challenging without a major road improvement project.

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

1. Prior to the issuance of building permits, dedicate right-of-way along the property frontage to accommodate future sidewalks per the Major and Collector Street Plan 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](http://www.nashville.gov/mc/ordinances/term_2015_2019/bl2016_493.htm))**