



## **AGENDA MEMORANDUM**

Planning Commission Meeting of May 29, 2019

**DATE:** May 23, 2019

**TO:** Nina Nixon-Méndez, Director of Development Services

**FROM:** Greg Collins, Senior City Planner, Development Services  
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**The Esplanade Unit 1, Block 1, Lots 2A & 2B (Final Plat)**  
Request for a Plat Waiver of the Sidewalk Ramp Construction Requirement  
in Section 8.1.4 and 8.2.2 of the Unified Development Code

### **BACKGROUND:**

Bass & Welsh, on behalf of property owner, IBC Bank, submitted a request for a waiver of the plat requirement to construct sidewalk ramps, in Section 8.1.4.A and 8.2.2.A of the Unified Development Code (UDC).

The subject property, known as The Esplanade Unit 1, Block 1, Lots 2A & 2B, a Replat of 1.6277 acres +/-, is located east of Staples Street and north of The Esplanade Drive. The land is zoned General Commercial 2 ("CG-2"). This plat was approved by Planning Commission on March 23, 2019. This replat subdivided Lot 2 Block 1 into two separate lots, Lot 2A and Lot 2B. Lot 2A (the western lot on Staples and The Esplanade Drive) is the location of the existing bank building and parking lot. Lot 2B (the eastern lot) is vacant. The landowner states in their plat application that the purpose of this replat is to sell Lot 2B.

After approval of the plat by Planning Commission, the applicant was in the process of satisfying public improvement construction requirements in order to record the plat. One of the requirements in the Plat Review Comments document, Development Services Engineering Comment #5, stated that "Sidewalk ramps along the existing sidewalk" are required. Existing, tied sidewalk runs east-west along the north side of The Esplanade Drive. There are two driveways providing access to Lots 2A and 2B. Where the tied sidewalk and curb intersect the driveways, there is a drop off and difference in grade between the sidewalk and the driveway, thereby impeding accessible pedestrian traffic movement. As a result, four (4) curb ramps are required (two (2) ramps for each driveway). In response to DS Engineering Comment #5, the applicant applied for a waiver from the ramp requirement.

### **STAFF ANALYSIS and FINDINGS:**

UDC Section 8.1.4 and 8.2.2.A require construction of sidewalks as part of the platting process. UDC Table 8.2.1.C. also requires sidewalk for The Esplanade Drive. Although The Esplanade

Drive is not designated a collector in the Urban Transportation Plan (UTP), it has a right-of-way width of 60 feet and is functionally equivalent to a C1 collector. The same traffic speed and safety concerns occurring for pedestrians along a C1 collector would also occur along The Esplanade Drive.

In addition to sidewalk requirements, curb ramp requirements appeared after enactment of the ADA in 1990, and “are a small but important part of making sidewalks,” according to the ADA<sup>1</sup> Best Practices Tool Kit for State and Local Governments.<sup>2</sup>

The applicant asserts the following factors and arguments in support of the request for waiver from the sidewalk ramp construction requirement:

1. The slope of the existing driveway may exceed the ADA maximum of 2%, which may require the removal of 6 or 7 feet of driveway to correct the cross-slope problem.
2. Several additional feet of driveway and curb may have to be removed and regraded in order to create a smooth transition back into existing grade.
3. There is no new construction planned in connection with this plat. (The purpose of the plat is the sale of newly-created Lot 2B).
4. UDC Article 8 and Section 8.1.4 (Types of Improvements Required) deals primarily with the design and construction of new subdivisions, and not the re-subdivision or replatting of land previously developed and constructed in accordance with prevailing design standards at the time.
5. UDC Section 8.2.2.A deals with the construction of new sidewalks where there are no existing sidewalks. Nowhere in that section does it address reconstructing existing sidewalks originally constructed in accordance with the prevailing standards at the time of construction, requiring an upgrade to current standards.

Factors and arguments weighing against the waiver and in support of requiring sidewalk ramps include:

1. The prior plats that had created Lot 2, and its associated public improvements and sidewalk, were recorded on April 12, 1985 (Volume 50, Page 159) and November 21, 1985 (Volume 51, Page 123-124). The design and construction standards for subdivisions at that time did not reflect The Americans with Disabilities Act of 1990, enacted after these plats, and prior to this current replat.
2. City staff and the Technical Review Committee review all plats for compliance with current subdivision standards in the UDC, whether the land is unplatted, or is a replat. In short, a replat is a new plat. This replat creates two new lots: Lot 2A and Lot 2B. Just as improvements in water, wastewater, stormwater, fire hydrant may be required in a replat, so too improvements in sidewalk may be required.
3. The applicant’s request states that “[t]here may be construction in the future on Lot 2B

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<sup>1</sup> “ADA” is the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

<sup>2</sup> <https://www.ada.gov/pcatoolkit/chap6toolkit.htm> accessed on May 23, 2019.

and most assuredly the driveway associated with that construction would be compliant.” Because the driveway and sidewalk in question are located along right-of-way, construction of accessible curb ramp is required at the time of platting, and not at the site development / building permit stage of development.

4. The Comprehensive Plan’s vision for transportation and mobility calls for “connected networks of good streets and sidewalks and safe bicycle routes.”

Regarding sidewalk plat waivers, the UDC does state, under Section 8.2.2.B.1-4, that a waiver *may* be granted, in accordance with the waiver procedure in Section 3.8.3.D., but only if certain conditions exist:

1. Sidewalks shall not be required along each side of a street right-of-way where such street is a permanent dead-end street and where there is pedestrian access from the permanent dead-end street to a paved hike and bike trail. In such instance, a sidewalk only shall be required on one side of the street right-of-way.
2. Sidewalks shall not be required along street rights-of-way where each lot fronting on such street has direct access from the side or rear to a paved hike and bike trail.
3. Sidewalks shall not be required for residential subdivisions in the Farm-Rural and Residential Estate zoning districts.
4. Sidewalks adjacent to private streets may be allowed to be placed on only one side of the street if the sidewalk width is 6 feet or greater and approved by the Assistant City Manager of Development Services.

None of the enumerated conditions in UDC 8.2.2.B.1-4 for a sidewalk waiver exist on this subject property.

In any event, Section 3.8.3.D of the UDC provides factors to consider plat waivers, and states that the need for the waiver shall be demonstrated to the Planning Commission’s satisfaction. The waiver may be approved, approved with conditions, or denied, after consideration of the following factors:

1. The granting of the waiver shall not be detrimental to the public health, safety or general welfare, or be injurious to other property in the area, or to the City in administering this Unified Code;
2. The conditions that create the need for the waiver shall not generally apply to other property in the vicinity;
3. Application of a provision of this Unified Development Code will render subdivision of land unfeasible; or
4. The granting of the waiver would not substantially conflict with the Comprehensive Plan and the purposes of this Unified Development Code.

**STAFF RECOMMENDATION:**

Weighing the factors, Staff recommends denial of the waiver from the sidewalk curb ramp construction requirement.

Planning Commission may choose to follow or decline Staff's recommendation, and Planning Commission may approve, approve with conditions, or deny the waiver request.

**LIST OF SUPPORTING DOCUMENTS:**

Exhibit A -- Final Plat

PowerPoint Presentation-Waiver from Sidewalk Curb Ramp Requirement