

## Legislation Details (With Text)

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<b>File #:</b>	21-1197	<b>Name:</b>	
<b>Type:</b>	Plat	<b>Status:</b>	Passed
<b>File created:</b>	11/1/2021	<b>In control:</b>	City Council
<b>On agenda:</b>	11/22/2021	<b>Final action:</b>	11/22/2021

**Title:** Approval of a waiver from Section 118-49(a) of the Subdivision Platting Ordinance to not require the construction of a 6-foot wide public sidewalk along the Interstate 35 Access Road adjacent to Lot 1, Block 1 of the proposed Herber Estates Subdivision.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Herber Aerial Map, 2. Approved Final Plat (not recorded), 3. Letter of Waiver Justification, 4. Photograph and Schematic Exhibit, 5. Excerpt of Minutes from the November 2, 2021 Planning Commission Regular Meeting

Date	Ver.	Action By	Action	Result
11/22/2021	1	City Council	approved	Pass

**PRESENTER:**

Jean Drew, AICP, CNU-A; Planning and Development Services Assistant Director

**SUBJECT:**

Approval of a waiver from Section 118-49(a) of the Subdivision Platting Ordinance to not require the construction of a 6-foot wide public sidewalk along the Interstate 35 Access Road adjacent to Lot 1, Block 1 of the proposed Herber Estates Subdivision.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** N/A Outside City Limits

**BACKGROUND INFORMATION:**

**Case #:** WVR21-360

**Owner:** John Herber  
175 Herber  
New Braunfels, TX 78130  
(830) 237-3383      jwoodshop@gmial.com

**Applicant:** HMT Engineering & Surveying (Bill Ball, P.E.)  
290 S. Castell Ave., Suite 100  
New Braunfels, TX 78130  
(830) 625-8555      billb@hmtnb.com

Staff Contact: Matt Greene  
(830) 221-4053 mgreene@nbtexas.org

The subject property consists of approximately 38.64 acres located at the intersection of IH 35 and Herber in the ETJ in Comal County and is intended to be subdivided into 2 residential lots. The minor plat of the Herber Estates Subdivision was approved by the Planning Commission in September of this year with a Condition of Approval to add a plat note stating: “a six (6) foot wide sidewalk will be constructed along Interstate 35 Access Road per City standards by the owner/developer of Lot 1, Block 1 within 60 days of recordation of this subdivision plat”. The length of 6-foot wide sidewalk required to be constructed is approximately 30 linear feet.

Sidewalks:

**The applicant is requesting a waiver from the requirement of constructing a 6-foot wide public sidewalk along the Interstate 35 Access Road adjacent to Lot 1, Block 1.**

Section 118-49(a)(1) of the Subdivision Platting Ordinance requires sidewalks on the subdivision or development side or sides of all major throughfares or arterial streets as indicated on the City’s throughfare plan, or a major throughfare as determined by the Planning Commission, and on perimeter streets.

The applicant states in the engineer’s attached Letter of Waiver Justification, that “the waiver is requested to avoid ineffective and redundant operations relating to TxDOT’s planned project for the I-35 Comal County Operational Improvements Northern Project extending from the Guadalupe River in New Braunfels to the Comal/Hays County Line, which includes the planned construction of sidewalks along the Interstate 35 Access Road” (see attached Photograph and Schematic Exhibit). As shown in the exhibit, the Interstate 35 Access Road will be relocated and in closer proximity to the existing Interstate 35 roadway at a lower grade elevation. Further, the engineer states that “TxDOT has informed him they do not see the need for the applicant to construct the sidewalk at this time as the sidewalk would not have any connections for several miles (under current conditions) and would not tie-into the future sidewalk constructed by TxDOT along the realigned Interstate 35 Access Road, and would just be abandoned or demolished during the TxDOT construction project.” The attached exhibit shows the location of the future TxDOT sidewalk that will be constructed approximately 100 feet from the Herber Final Plat r-o-w where the code requires the sidewalk to be constructed.

Sidewalks are required to provide walkable and multimodal connections for pedestrians to have an alternative means of access to adjacent locations without needing to drive a car. Staff typically supports requiring sidewalks, and a standard comment might require that escrow be posted to allow the sidewalk to be constructed at a later date, or that a note be placed on the final plat indicating that the sidewalk must be constructed at the time of building permit, as was the staff recommended condition placed on approval of this final plat. However, neither method would accommodate TxDOT’s construction of the sidewalk as part of their current realignment construction project.

**ISSUE:**

All sidewalk waiver requests recommended for approval by the Planning Commission, are forwarded to City Council for final consideration.

The Subdivision Platting Ordinance authorizes waivers to be granted when:

1. An undue hardship will result from strict compliance with the ordinance, or
2. When the purpose of the regulation may be served to a greater extent by an alternative proposal, so that

substantial justice may be done, and the public interest is secured.

The ordinance also states a waiver may not be approved unless it is found that:

1. Granting the waiver will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity.
2. Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; or an alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein; and
3. The waiver will not in any manner vary the provisions of the Zoning Ordinance or other ordinance(s) of the City.

**FISCAL IMPACT:**

Sidewalks not constructed by the developer may have to be constructed later at taxpayer expense.

**RECOMMENDATION:**

Committee Recommendation:

On November 2, 2021 the Planning Commission unanimously recommended approval of the sidewalk waiver (8-0-0, with Commissioner Tubb absent)

Staff Recommendation:

Approval. Staff believes the current TxDOT project for the I-35 Comal County Operational Improvements Northern Project will better fulfill the city sidewalk requirement with the construction of a continual sidewalk connecting to the adjacent properties.

**Resource Links:**

Chapter 118-49(a)(1) Sidewalks, of the City's Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-49SI](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-49SI)

Chapter 118-49(b) Sidewalks, of the City's Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-49SI](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-49SI)

**Attachments:**

Aerial Maps

Approved Final Plat (not recorded)

Applicant's Letter of Waiver Justification

Photograph and Schematic Exhibit

Excerpt of Minutes from the November 2, 2021 Planning Commission Regular Meeting