

## Legislation Text

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**File #:** 21-1116, **Version:** 1

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**PRESENTER:**

Applicant: Westwood Professional Services (Drew Defendorf)

Owner: Meritage Homes (Tonda Alexander)

**SUBJECT:**

WVR21-363 Discuss and consider a waiver request from Section 118-49 of the Subdivision Platting Ordinance to not require construction of a sidewalk along Loop 337 for the Lark Canyon Subdivision Unit 1.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** Council District 3

**BACKGROUND INFORMATION:**

Case #: WVR21-363

Owner: Meritage Homes  
Tonda Alexander  
2722 Bitters Road, Suite 200  
San Antonio, TX 78248  
(210) 298-4294      tonda.alexander@meritagehomes.com

Engineer: Drew Defendorf, P.E.  
Westwood Professional Services  
1718 Dry Creek Way, Suite 110  
San Antonio, TX 78259  
(210) 265-8309      drew.defendorf@westwoodps.com

Case Manager: Holly Mullins  
(830) 221-4054      hmullins@nbtexas.org

Lark Canyon Subdivision is located near the intersection of Westpointe Drive and Loop 337. Most of Lark Canyon is outside the city limits in the City's ETJ; however, a strip of land adjacent to Loop 337 is within the city limits and zoned R-2. A subdivision master plan was approved in 2020 and a final plat for Unit 1 approved in 2021.

**ISSUE:**

**The applicant is requesting a waiver from Section 118-49 to not require construction of a sidewalk along Loop 337, citing challenges with construction and practicality of the sidewalk location. Their letter detailing their request is attached.**

This section of Loop 337 was constructed prior to TxDOT including sidewalks in their projects. However, TxDOT is currently constructing sidewalks along the segment of Loop 337 near the intersection of River Road which has topography challenges as well. The subject sidewalk waiver would create a future gap in sidewalk of approximately 420 linear feet if approved.

All sidewalk waivers recommended for approval, or approval with conditions, by the Planning Commission are forwarded to City Council for final consideration. If the Planning Commission denies the waiver request, that denial stands.

The ordinance authorizes waivers to be granted when:

1. An undue hardship will result from strict compliance with the ordinance, or
2. The purpose of the regulation may be served to a greater extent by an alternative proposal; and provided the waiver shall not nullify the intent and purpose of the regulations.

Waiver criteria are provided below in Commission Findings.

In considering a sidewalk waiver request, the Planning Commission has three options:

1. Deny the waiver request and require the sidewalk to be installed with subdivision construction. (The exact location would need to be determined. Section 118-49 requires sidewalks along TxDOT right-of-way to be separated at least four feet from the curb.)
2. Require that the developer escrow the estimated amount for the cost of the sidewalk for construction by the City at a later date. (This is not a viable option as there are no City projects planned for this area in the next 10 years.)
3. Recommend approval of the waiver.

### **Commission Findings:**

The adopted Subdivision Platting Ordinance indicates the Planning Commission shall not approve/recommend approval of a waiver unless it makes findings based upon the evidence presented to it in each specific case 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 or escrowed with development may have to be constructed later at taxpayer expense.

### **RECOMMENDATION:**

Staff does not support waiving the sidewalk requirement. Staff acknowledges the challenges associated with this location but does not believe they are insurmountable as demonstrated by TxDOT's current sidewalk installation on Loops 337 at River Road. Envision New Braunfels Comprehensive Plan identifies several actions related to improving connectivity and prioritizing the sidewalk network. The subject property is located between residential development and a major commercial center where a safe pedestrian route is important.

Absence of a sidewalk does not preclude people from walking.

Staff recommends the waiver be denied, and the applicant continue to examine the property for sidewalk locations to meet the intent of the ordinance requirement.

Should the Planning Commission recommend approval of the sidewalk waiver, it will go to City Council on November 22nd for final action.

**Resource Links:**

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

[Sec. 118-49. - Sidewalks. | Code of Ordinances | New Braunfels, TX | Municode Library](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](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-49SI)>

**Attachments:**

1. Aerial Map
2. Plat Waiver Justification Letter
3. Sidewalk Exhibit
4. Photographs