



LAND USE HEARING OFFICER VARIANCE REPORT

APPLICATION NUMBER: VAR 22-0755 PR	
LUHO HEARING DATE: June 21, 2022	CASE REVIEWER: Richard Perez, AICP

REQUEST: The applicant is requesting a variance to waive the required sidewalk along its Towaway Ave. frontage associated a Minor Site Review (PI#6045) to replace two existing modular offices with one new modular office. The requested variance only applies to the current phase described above. The applicant has stated that at the time of subsequent phases of development all required sidewalks will be constructed consistent with the Land Development Code requirements. The property is zoned Commercial Intensive (CI) and Manufacturing (M).

VARIANCE(S):

GENERAL DESCRIPTION	REQUIREMENTS	VARIANCE	RESULT	APPLICABLE LDC SECTIONS
Variance from requirement to construct sidewalk along project frontages.	Construct a minimum 5-foot sidewalk along the project's Towaway Ave. frontage.	Eliminate requirement to construct a sidewalk along project's Towaway Ave. frontage.	The developer would not be required to construct the external sidewalk on Towaway frontage.	6.03.02.A. 6.03.02.C. 6.03.02.F 6.03.02.H.
Variance from requirement to construct a certain sidewalk within the property.	Construct a minimum 5-foot wide sidewalks between internal sidewalks serving the primary building entrance(s) and the parking for the existing/proposed use(s) and the required sidewalks along the project's Towaway Ave. frontage.	Eliminate requirement to construct a sidewalk connecting required sidewalk along project's Towaway Ave. frontage and primary building entrance(s) and parking area of the existing/proposed use(s).	The developer would not be required to construct certain internal sidewalks.	6.03.02.A. 6.03.02.B.1. 6.03.02.H.

FINDINGS:

- Provided as Exhibit A, are a set of protocols designed to assist staff's implementation of certain sections of the Land Development Code (LDC). These protocols have been implemented by the County Engineer as an interpretation of relevant sidewalk regulations

as provided for within the LDC.

- The applicant states that the alleged hardship is unique and singular to the subject property due to the fact that *“The property is maintaining its use and There are no significant improvements to the overall site. This is a minor site review. There are currently no other sidewalks on the property, nor the adjacent properties...”* Staff finds that the applicant has failed to outline a specific hardship that does not apply to any other property that is not compliant with the LDC requirements to provide sidewalks at the time of site/construction plan review, including minor site review. Staff also finds that there are many similarly situated properties within the County that are required to construct sidewalks, despite that do not currently have sidewalks.

Staff finds that simply stating *“There are no existing sidewalks to which the required sidewalk would connect.”* does not qualify. Staff notes that per the Hillsborough County Property Appraiser Office website the subject parcel extends east to S. 50th Street (US Hwy 41) which has an existing continuous sidewalk along the property frontage as shown on the Zoning Aerial Map Exhibit C attached to this report. The applicant appears to be creating an artificial constraint by not including the entire property in the site plan. Said site plan is attached Exhibit B. While the applicant could pursue a parcel split there is no guarantee that the County would find it approvable.

- With regards to the second criteria, staff finds the applicant has failed to explain how requiring the sidewalk would deprive the applicant of rights commonly enjoyed by other properties in the same district and area under the terms of the LDC. The applicant states that *“The cost of the installing the required sidewalks is prohibitive to the scope of the minor site review and improvements requested.”* The applicant is proposing to remove damaged structures and add a new structure, requiring bringing the project through the site development review processes and triggering the need to bring the newly (re)developed and otherwise affected portions of the site into compliance with the LDC.

The applicant also states, *“There is no benefit gained by installation of the sidewalks and there are no sidewalks on the adjacent properties.”* Staff notes that external sidewalks do not only benefit the subject property, and, as such, regulations requiring such sidewalks are not and should not be reliant on whether the property owner perceives a benefit from their installation. Furthermore, sidewalks currently exist along the subject parcel’s eastern frontage on S. 50th Street (US Hwy 41) as shown on the Zoning Aerial Map exhibit attached to this report but are not shown on the applicant’s site plan.

Staff finds the applicant has failed to describe how compliance with the LDC would deprive the applicant of any such rights and that there is not a “right” to not construct sidewalks; as such, no deprivation of rights can or will occur.

- With regard to the third criteria, the applicant states in the variance request *“There are no sidewalks on the adjacent properties and no foot traffic to or from the subject property in the adjacent streets.”* Staff finds this statement to be incorrect as previously stated there is an existing sidewalk along the subject parcel’s eastern frontage as shown on the Zoning

Aerial Map Exhibit C attached to this report, and adjacent properties with frontage on S. 50th Street (US Hwy 41).

The applicant states “There is not benefit derived from installing the sidewalks, so there, no harm is imposed on the adjacent property owners.” Staff finds this statement to be incorrect with respect to the variance request for the sidewalk along Towaway Ave. would deprive pedestrians traveling to or from the property and the public at large use of the sidewalk, a safer path of travel.

Regardless of how many or how frequently pedestrians may travel on a given segment of sidewalk, staff finds that waiver of the sidewalks would cause an injury to pedestrians coming to/from adjacent properties (with respect to the internal sidewalk waiver), or to/from an adjacent property to an unrelated destination (with respect to the external sidewalk waiver).

- With regard to the fourth criteria, staff finds that the applicant failed to reference any relevant LDC Section or Comprehensive Plan Goal, Object, or Policy to address how the variance would serve the general intent and purpose of the Comprehensive Plan. Staff notes the following sections of the Hillsborough County Comprehensive Plan, Transportation Element in support of the required sidewalks:
 - Goal 3, “Provide a county-wide bikeway and pedestrian system that is integrated with other transportation modes.”
 - Objective 3.1, “Include appropriate bicycle facilities, trails, and sidewalks in all planning, design, construction and maintenance activities related to transportation.”
 - Policy 3.1.3, “Enforce regulations requiring private developers to include bicycle facilities/trails and sidewalks in private developments to promote bicycle/pedestrian connections, in accordance with adopted policies and standards.”
 - Objective 3.2, “The County shall adopt policies and design standard that provide a safe, convenient and enjoyable bicycle and pedestrian facilities to increase the use of cycling and walking for all travel purposes.”

Staff also notes the following sections from the Community Design Component of the Future Land Use Element in support of the required sidewalks:

- Goal 15, “Provide a transportation system throughout Hillsborough County that is safe and functional for all modes of transportation, is aesthetically-pleasing, and is designed to meet the overall needs of the communities it serves.”
- Policy 15-1.1, “Design pedestrian facilities for designated roadways in urban and suburban areas to include the following considerations: Continuous sidewalks, free of obstruction...”
- Policy 15-1.2, “Provide direct routes between destinations, minimize potential conflicts between pedestrian and automobiles...”

Staff notes the following subsections from the Hillsborough County Land Development Code Section 6.03.02. standards requiring sidewalks for all new site development plans:

- Sec. 6.03.02. A. “Sidewalks shall be required in all Land Use categories where necessary to provide for safe pedestrian circulation and shall be constructed within rights-of-way, adjacent to or internal to the site, regardless of whether the site is adjacent to an existing or new road being constructed for dedication to Hillsborough County or the State of Florida. [*emphasis added*]

Public sidewalks and public sidewalk curb ramps shall conform to the latest requirements of Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities.”

- Sec. 6.03.02. B. “Internal sidewalks shall meet the accessibility requirements of the Florida Accessibility Code, specifically the following:

1. Accessible routes within the boundary of the site shall be provided from public transportation stops, parking and passenger loading zones, and public streets or sidewalks to the building entrance they serve.

2. Accessible routes shall connect buildings, facilities, elements and spaces that are on the same site.”

- Sec. 6.03.02. C. “Sidewalk construction on external roads shall be on the same side as the development and shall be continuous from boundary to boundary of the development.”
- Sec. 6.03.02. D. “In the event that a right-of-way is determined by Administrator to be too small for the construction of a safe sidewalk, developer shall construct the sidewalk within an easement approved by and dedicated to the County.”
- Sec. 6.03.02. E. “Sidewalks shall be constructed along the entire length of streets which are temporarily dead-ended but which will be expanded in the future.”
- Sec. 6.03.02. F. “Sidewalks shall be constructed within the right-of-way and along the entire width of a site developed under the site development regulations except as provided below:
 - 1. Where planned right-of-way improvements scheduled in the Capital Improvement Program within two years would require the destruction of the sidewalks. In this case, the developer shall be required to provide funds for the cost of sidewalk construction to the Capital Improvements Project Pseudo Code, or
 - 2. Where an approved Subdivision or Site Development Master Sidewalk Plan provides otherwise.”
- Sec. 6.03.02. G. “Sidewalk connections shall be designed to meet the

requirements of the Florida Accessibility Code.”

- Sec. 6.03.02. H. “Certificates of Occupancy may not be issued until sidewalks are constructed.”
- With regard to the fifth criteria, staff finds that the applicant has failed to define a hardship or explain how the developer’s petition does not constitute a self-imposed action/hardship. The applicant’s statement that “The property was in compliance prior to the application for improvement and will continue to function in the same manner.” is immaterial. If the sidewalks are not provided as part of the applicant’s minor site review to make certain improvements, it will not be in compliance with the LDC requirements.
- With regards to the sixth criteria, the applicant states “*Since the installation of sidewalks will be of no use to anyone using or visiting the property, there is no public benefit to requiring their installation. No unnecessary impervious surfaces will be added to the property. The cost to install the sidewalks would be a hardship given the scope of work proposed of improvements.*” Staff finds that the applicant has failed, as required in the application, to explain how allowing the variance would “...result in substantial justice being done, considering both the public benefits intended to be secured by this Code and the individual hardships that will be suffered by a failure to grant a variance.” [*emphasis added*]. Staff notes that the applicant did not provide any data or analysis on how the required sidewalk might lead to impervious surfaces in excess of LDC requirements for maximum impervious surfaces on site or how the impervious surface would negatively impact any public benefits.
- Staff finds there is no information in the record indicating how a waiver of the required sidewalks would facilitate and accommodate safe pedestrian circulation along Towaway Ave., a substandard roadway, and between external points of arrival and the existing/proposed uses. Staff finds the applicant has failed to describe how approval of the variance request would result in substantial justice to those pedestrians who would use said sidewalks.

Lastly, the applicant states, “*sidewalks will be of no use to anyone using or visiting the property*”. There is no way for the County to regulate access to or from a parcel such that it would permanently prohibit pedestrians from being able to access the site in all situations/circumstances. As such, accommodation of pedestrians is required and appropriate.

- On January 6, 2016 the Hillsborough BOCC adopted Resolution R16-007 pertaining to “Vision Zero” (the County’s goal that no loss of life is acceptable on County roadways).
- Notwithstanding staff’s findings above, should the LUHO find the variance request approvable, staff recommends that the variance approval be conditioned explicitly to only apply to the first phase of the site development, encompassed in minor site review (PI#6045), as requested by the applicant. All subsequent development phases of the subject site shall be required to comply with LDC sidewalk requirements.



INFORMAL SIDEWALK IMPLEMENTATION PROTOCOL*

**This protocol has been authorized by the County Engineer in order to provide additional information regarding sidewalk regulations within the Land Development Code (LDC), and provide detail on how the Administrator interprets the relevant LDC provisions (i.e. to determine when sidewalks are required). Design criteria can be found within the Hillsborough County Transportation Technical Manual and the LDC.*

1. Is the project within a Planned Development (PD) zoning district? If yes, check the PD site plan and zoning conditions to determine whether any graphics, notes or zoning conditions relate to sidewalks. If so, they must be followed, and you should proceed through the remaining steps of the checklist. Consult a planner in the Zoning or Transportation Review Sections of the Development Services Department for additional guidance. Proceed to Step 2.
2. Is the project within one of the areas listed below? If so, staff should refer to the Special District Regulations within Section 3 of the Hillsborough County Land Development Code (LDC), which provide requirements for each specific area. These requirements can specify both where sidewalks shall be constructed, and where sidewalks shall not be constructed. Some also provide a separate protocol which can result in an “override” of the prohibition against constructing a sidewalk. Staff must evaluate each site separately at the time of permitting, since things can change over time.

If the project is not all or partially within one of these areas, then proceed to Step 3.

- Section 3.08.07, pertaining to **Keystone-Odessa Community Planning Area**
- Section 3.09.07, pertaining to the portion of the **Lutz Community Planning Area within the Rural Services Area**
- Section 3.10.06.11, pertaining to **Citrus Park Village**
- Section 3.12.09 and 3.12.10, pertaining to **Brandon Main Street**
- Section 3.17.03, pertaining to the **Ruskin Town Center Zoning District**
- Section 3.19.03, pertaining to the **Riverview Downtown Districts**

Note: Staff should use DSD viewer to determine the above information. If two or more Community Planning areas are listed or affect a given property, staff should seek guidance from a Zoning or Transportation Review Section planner in order to determine the appropriate standards to apply.

3. If the project is not within one of the areas listed above, then the general sidewalk rules provided for in the following LDC sections apply: Section 6.02.08, subdivision standards, sidewalks, and Section 6.03.02, site development standards, sidewalks. Proceed to Step 4.
4. Is the project within the Urban Services Area (USA)? If so, then sidewalks are required. If no, proceed to Step 5.
5. Is project outside of the USA? If so, follow the County Engineer’s sidewalk protocol to determine when sidewalks are required (i.e. proceed to Step 6). When one or more of the protocols are triggered, sidewalks are required.



SIDEWALK IMPLEMENTATION PROTOCOL*

6. County Engineer's Sidewalk Protocol for Sites within the Rural Service Area:

- a. Is the site all or within one (1) mile of the Urban Service Area? If yes, sidewalks are required to be provided as described in Sections 6.02.08 and 6.03.02 of the LDC. If no, proceed to 6.b.

Note: Staff should use DSD viewer to determine this information. All measurements for 6.a. shall be taken via a straight line (i.e. "as the crow flies").

- b. Is the site within a future land use or zoning designation that provides for extension of utilities outside of the Urban Services Area? Examples of these designations include the Wimauma Village Residential -2 (WVR-2) and Residential Planned – 2 (RP-2) future land use classifications. If no, proceed to 6.c. If yes, sidewalks are required.
- c. Is the site within a two (2) mile walking distance of a public school? If yes, sidewalks are required. If not, proceed to 6.d.

Note: Staff should use a combination of the DSD viewer and a thorough google maps search to determine this information. All measurements for 6.c. shall be taken via a "walking distance" methodology. More specifically, measurements shall be taken to determine whether any edges of the project parcel(s) are within a 2-mile walking distance of a public school, regardless of whether there are sidewalks along the walking route. Additionally, per Florida Statutes, all charter schools are considered public schools; however, charter schools are not listed within the DSD viewer (hence the need to also use a Google Maps search).

- d. Is the site located on a roadway which has been designated by the School District of Hillsborough County as having a hazardous walking condition, as defined by Section 1006.23, Florida Statutes? If yes, sidewalks are required. If no, sidewalks are not required, unless otherwise specified in Steps 7 or 8, below.

7. **Special Advisory 1.** Although sidewalks may not be required using steps 1-6 above, staff should note that sidewalks may be required pursuant to other rules or regulations. Specifically:

- a. Disabled parking must have ADA compliant accessible sidewalks provided between the disabled parking space and primary entrance(s) to the proposed use(s). Also, for commercial sites, ADA compliant accessible sidewalks must be provided between the primary entrance(s) of the proposed use(s) and each site arrival point (i.e. connection to the roadway system); and,
- b. Certain uses are subject to the Special/Conditional Use Regulations specified within [Part 6.11.00 of the LDC](#). These uses may have specific sidewalk requirements which must be enforced independent of the above protocols. For example, Section 6.11.24 requires special sidewalks internal to a site for Child Care Centers (i.e. daycare uses).



SIDEWALK IMPLEMENTATION PROTOCOL*

8. **Special Advisory 2.** Where sidewalks are described above as being required or prohibited, applicants generally have the option to apply for a Section 11.04 LDC variance from the specific regulation(s) which require or prohibit the sidewalk. Where a project is zoned as a Planned Development (PD), a site plan feature, plan note or zoning condition may have been written in such a way that would require a developer to construct a sidewalk, regardless of the process afforded by the LDC which may allow the property owner to seek a variance. Where a site plan feature, plan note or zoning condition conflicts with LDC standards or other regulations, the more stringent provision shall generally prevail.

For example, if a zoning condition were to state “The developer shall construct a sidewalk along all roadway frontages.”, the developer would be unable to obtain a variance to waive the required sidewalk without first modifying the PD zoning condition. If a zoning condition stated, “The developer shall construct a sidewalk along all roadway frontages, unless otherwise approved by Hillsborough County.”, then no zoning condition change would be necessary in order to allow the property owner to seek relief via the Section 11.04 variance process.

Similarly, a PD project may have shown a proposed sidewalk or pathway on a PD site plan, or otherwise included a note on the PD plan which stated the project would be providing a specific improvement. It should be noted that such graphics may be present without a corresponding zoning condition. Regardless, the presence of a graphic or note would have the same effect as a PD zoning condition, and the applicant may not be able to seek a variance without first modifying the PD site plan.

Note: Section 11.04 variances are very difficult for an applicant to get approved, and the application fee is +/- \$2,000 and takes at least 2-3 months. It is not simply a matter of, “I can’t afford to comply” or “I don’t want to comply”. An applicant must meet each of the six (6) variance criteria in order to receive approval. Staff should not direct people to this process unless appropriate (so as not to recommend something which will lead to additional delay and expense and is highly unlikely to result in their desired outcome), or unless staff takes the time to explain the process, challenges, and outcomes of similar variance requests (so they can evaluate whether the time, expense and risk is worth it). If they want more information on the process, staff should provide the appropriate information, as well as examples of previous denials. Staff should also make the applicants aware of what happens if the variance is denied (i.e. months from now, they may end up back in the same situation they are in today). Applicants should also be made aware that no certificates of occupancy (temporary or otherwise) can be granted until the required sidewalk is in place, pursuant to the LDC (reference Sections 6.02.08.B.2., 6.020.8.B.3., and 6.03.02.H.)

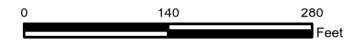
EXHIBIT C



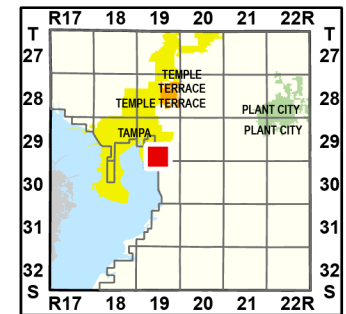
ZONING MAP VAR 22-0755

Folio: 46816.0000

- APPLICATION SITE
- ZONING BOUNDARY
- PARCELS
- S SCHOOLS
- P PARKS



STR: 33-29-19



NOTE: Every reasonable effort has been made to assure the accuracy of this map. Hillsborough County does not assume any liability arising from use of this map. Hillsborough County makes no warranty, representation or guarantee as to the content, sequence, accuracy, timeliness, or completeness of any of the information provided herein. The reader should not rely on the data provided herein for any reason. Hillsborough County explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. Hillsborough County shall assume no liability for:

1. Any errors, omissions, or inaccuracies in the information provided regardless of how caused, or
2. Any decision made, or action taken or not taken by any person in reliance upon any information or data furnished hereunder.

This dataset is provided by Hillsborough County for informational purposes and Hillsborough County does not guarantee the accuracy or content of the data.

SOURCE: This map has been prepared for the inventory of real property found within Hillsborough County and is compiled from recorded deeds, plats, and other public records. It has been based on BEST AVAILABLE data.

