Staff is currently reviewing sidewalk requirements in the UDO. Sidewalks are required for subdivisions of property, and this requirement is not changing. There are several other instances in the code where new sidewalk construction is required. Petitioners have the option of applying for a variance from constructing a sidewalk. We are reviewing both the triggers that require construction of a sidewalk, and the “Findings of Fact” criteria for variance review.

Sidewalk Variance: means the property owner is not required to build a sidewalk ever. The City could still decide to build a sidewalk in the right-of-way in the future.

Determinate Sidewalk Variance: a variance that is temporary and the property owner could be required to build the sidewalk in the future. Difficult to track.

Development Standards Variance: not currently used for sidewalks, but this is the criteria for review of other development standards variance requests (height, setbacks, driveways, etc.).

20.09.135 Sidewalk and Determinate Sidewalk Variances

(a) Intent: The purposes of this section are:

(1) To outline the process by which petitions for a sidewalk variance and a determinate sidewalk variance are considered;

(2) To provide a mechanism to approve these petitions that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of Section *20.05.010(b)(3)* will result in practical difficulties, and so that the spirit of *Section 20.05.010(b)(3)* shall be observed and substantial justice done.

(b) Applicability: The board of zoning appeals or hearing officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*, may grant sidewalk variances and determinate sidewalk variances.

(c) Findings of Fact for Sidewalk Variance: Pursuant to Indiana Code 36-7-4-918.5, the board of zoning appeals or the hearing officer may grant a variance from *Section 20.05.010(b)(3)* of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and

(2) The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and

(3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties.

(4) That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk as required by *Section 20.05.010(b)(3)*; and

(5) That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which the new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians.

(d) Findings of Fact for Determinate Sidewalk Variance: Pursuant to Indiana Code 36-7-4-918.5, the board of zoning appeals or the hearing officer may grant a variance from *Section 20.05.010(b)(3)* of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and

(2) The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and

(3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the development standards variance will relieve the practical difficulties; and

(4) The adjacent lot or tracts are at present undeveloped, but it appears that at some future date these lots or tracts will be developed, increasing the need for sidewalks for the protection and convenience of pedestrians; and

(5) The location of the lot or tract is such that the present pedestrian traffic does not warrant the construction of sidewalks, but it appears that in the future the pedestrian traffic may increase; and

(6) Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.

20.09.130 Development Standards Variance

(a) Intent: The purpose of *Section 20.09.130; Development Standards Variance* is:

(1) To outline the process by which petitions for variances from the development standards of the Unified Development Ordinance are considered;

(2) To provide a mechanism to approve those petitions that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in practical difficulties, and so that the spirit of the Unified Development Ordinance shall be observed and substantial justice done.

(b) Applicability:

(1) The Board of Zoning Appeals or Hearing Officer, in accordance with the procedures and standards set out in *Chapter 20.09: Processes, Permits and Fees*, may grant variances from the development standards applicable to the zoning district in which the subject property is located.

(2) *Effect of Approval of Variances from the Development Standards*: The grant of variances from the development standards authorizes the development and establishes the terms of use. Variances from development standards are also subject to Site Plan requirements, all necessary permits and approvals, and other applicable requirements. All required permits must be obtained before any grading, construction, or use commences.

(c) Exceptions:

(1) *Subdivision Control*: It is not within the jurisdiction of the Board of Zoning Appeals or Hearing Officer to grant Development Standards Variances of *Chapter 20.06: Subdivision Types* or *Chapter 20.07: Design Standards*.

(d) Application: Refer to application requirements found at *Section 20.09.030: Applications; General*.

(e) Findings of Fact: Pursuant to IC 36-7-4-918.5, the Board of Zoning Appeals or Hearing Officer may grant a variance from the development standards of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and

(2) The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner; and

(3) The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.