

8/31/2021

Zara Niederman  
3V Development LLC

RE: ADM 2021-000057 Appeal

Dear Mr. Williams

I am writing to appeal the decision of the Planning Commission ADM 2021-000057 regarding the requirement of removing an existing sidewalk and replacing it with a new larger one.

There are several problems here: 1) The City and the Planning Commission have never been able to show an impact on sidewalks that this development would cause. 2) If they were able to show some impact, they still have not shown in any way how their requirement would alleviate that impact. 3) As they have not been able to show how their requirement would alleviate any impact, they also have not shown in any way how their requirement would in any way provide benefits to the developer, or its future occupants. 4) If they were able to show any benefits, those benefits would most certainly accrue not only to this development, but also to the neighbors and neighborhood as a whole - yet they are requiring the developer to pay in full, rather than a fair proportion of that benefit.

In *Dolan vs City of Tigard*, the Supreme Court ruled that there must be a rational nexus between the impact of the development and specific requirements. In addition, there must exist a “rough proportionality” of the conditions specified and the impacts. The requirement of “rough proportionality” ensures that this does not “*force some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole*” in violation of the *Just Compensation Clause*. *Pennell v City of San Jose*.

In this case, just like *Dolan vs Tigard*, “the City has identified “no special benefits” conferred [to this development] and has not specified any “special quantifiable burdens” created by [this development] that would justify the particular [requirements] which are not required from the public at large.”

It may appear that because the sidewalk is adjacent to the property, one could (and many have) easily mistakenly assumed that there is therefore a Rational Nexus between the requirement and the impact. The City has in fact never been able to show an impact, and therefore, does not show a rational nexus. That is because **increased pedestrian traffic is not an impact, it is a desired outcome of City Plan 2040.**

From *Dolan vs City of Tigard*, the Supreme Court found: “The city’s goals of reducing flooding hazards and traffic congestion, and providing for public greenways, are laudable, but

there are outer limits to how this may be done. 'A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change' "

To clarify the above reasoning I would like to add these points here:

- 1) In the staff report, The City has never stated why the existing sidewalk is not satisfactory, why there is a need for a new sidewalk here and how this new section of sidewalk will offset any supposed impact. Likewise, the Planning Commission never addressed this.
  - a) The City has never shown how moving this sidewalk back, and enlarging it, given the whole rest of the street is 4' and at the back of the curb, will in any way add benefit to this project.
  - b) The City has never shown how moving this sidewalk back, and enlarging it, given the whole rest of the street is 4' and at the back of the curb, will in any way offset any pedestrian impact. The City states it will make determinations based on several factors. One of those items states "The Engineer shall review "the overall need for a sidewalk to be constructed on the lot." On Page 3: (d) of Jonathan Ely's report to the Planning Commission, leaves this question blank. He never addressed why there is a need for a NEW sidewalk to be built.
- 2) Dolan vs Tigard requires "the City must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the development." It states there must be a determination of impact, not just a conclusory statement. The City has not made an individualized determination of the impact. In fact the City never even attempts to claim what such impact might be. Likewise, the Planning Commission never addressed any impact on sidewalks this development would have, let alone some sort of individualized determination. The City only gives a conclusory statement that there will likely be increased pedestrian traffic.  
*"Due to increased density, and walkable area, it is likely that the development will generate increased pedestrian traffic."*
- 3) Assistant City Attorney Blake Pennington states that the cases that I cited do not support my case, and should not be used for any purpose by the City in considering the appeal. He was incorrect in this assessment. He never clearly states why they don't support the case, only stating that both Holmdel and Property Group deal with off-site improvements, as opposed to on-site improvements like sidewalks. In addition, he never addressed the case of City of Fayetteville vs IBI, Inc that I cited.

The Arkansas's Supreme Court struck down the City of Fayetteville's park impact fee because the City could not provide a timeline or plan for when the funds would be used that would benefit the development. The plan was simply too vague. Similarly here, there is already an existing sidewalk on this side of the street, there is not one on the opposite

side of the street, and there are missing sidewalks all across the neighborhood and City. Given the above, the likelihood that replacing the existing sidewalk up and down the rest of this block and move it back to the MSP ROW, takes priority over those is highly unlikely in the next 15 years. As Chris Brown, the Director of Public Works stated: *"this requirement is not based upon a future plan for improvements here."*

With regards to the two cases that Mr Pennington told the Planning Commission to disregard, it may be true that off-site improvements should be treated differently than on-site. However, just because there are different circumstances does not mean that they are not relevant. It may be fair to assert that Holmdel has limited relevance, because it deals with fees to provide affordable housing. However it is quite a leap to state its findings do not support the case. The City is requiring the developer to pay money to produce a Public Good, something that the City wants. It was not requiring those fees because there was a clear impact.

More troubling though is Assistant City Attorney's assertion that Property Group vs Planning and Zoning Commission does not support this case. Here he is flatly wrong. In this case, the Town of Tolland required the developer to expand the road in front of the land they were developing.

*"The entire length of the road has a paved width of approximately twenty feet. That portion of Buff Cap Road abutting the proposed subdivision will be the only stretch of the road with a paved width greater than twenty feet."*

This is the same situation as we are dealing with for the sidewalk issue here - none of the remaining sidewalk from 7th St to 15th St is 6' wide, and none of it is set back off of the street. The engineers requirements would make only this one section wider and further back than the whole rest of the street.

From the Tolland Case: *"At the public hearing on September 10, 1990, no testimony was offered suggesting that the need for widening Buff Cap Road was attributable to the addition of ten building lots on a road that already accommodated seventy-three homes. To the contrary, the testimony revealed that there were no plans to widen the remaining portions of the road. Mark Cadman, chairman of the commission, stated: "The Town does not have any other plans beyond this at this point."*

As a reminder, when I asked about future plans, Public Works Director Brown, regarding replacing the remaining sidewalk on S Washington, he stated:  
The *"requirements are independent of City workplans for sidewalks, and are not predicated on a plan or funding to make other improvements in the area."*

With regard to whether the road extension is on-site or off-site, the Town of Tolland claimed that since the owner had a fee interest in the right-of-way on which the road would be expanded, it was an on-site improvement. However both the Appellate and State Supreme Courts disagreed.

*"The Appellate Court concluded that the property, the "present and future use [of which] is determined by its prior dedication as a public road, not by the subdivision plan"; id.; "abuts the land to be subdivided . . . is part of the right-of-way of an existing public road" and, therefore, had been properly termed off-site by the trial court.*

The Connecticut Supreme Court concurred, finding *"the commission's reliance on the plaintiff's ownership of a fee interest ignores the impact that the town's right-of-way imposes on the plaintiff's free exercise of the use of its land."*

As you of course know, you provided a memo to the City Council on March 18, 2021 reiterating your memo to the City Council from June 3, 2004 stating that *"I again request that lot splits not be used to demand more than the necessary easements to serve the newly created lots. Building permits which will cause some impact upon our infrastructure needs could justify right-of-way dedications as desired in our Master Street Plan."*

What you may not know is that we had 4 lots of record on this property prior to planning our development. When we chose to do a Property Line Adjustment to convert our 4 lots into 3 lots, the City required us to dedicate land for the Master Street Plan Right-Of-Way. This was prior to any building permit application. This was clearly counter to the legal counsel you gave to the City. As such, given that the land had already been dedicated to the City for the Master Street Plan Right of Way, I would think one could equally argue that the sidewalk required by the City is also an off-site improvement. As Mr. Pennington stated in his letter to the Planning Commission, *"off-site improvements are going to necessarily be more difficult to justify than on-site improvements..."*

In conclusion, the City Engineers requirement for our development is not Constitutional. And as a matter of fact, aside from being a very inefficient and ineffective method of implementation, the whole Master Street Plan Sidewalk Policy is on shaky legal ground. The City requires developers to build sidewalks or pay a fee in lieu not based on the rough proportionality of the impact, instead it is based upon the length of the sidewalk frontage on their property and how wide the sidewalk is designated on the Master Street Plan. This is wholly unrelated to the scale and impact of the development. I would encourage the City Council not only to grant my appeal but to promptly address this problem with the Sidewalk Policy.

Thank you for your Consideration,

**ZARA NIEDERMAN**

Zara Niederman



**MEETING OF SEPTEMBER 21, 2021**

**TO:** Mayor; Fayetteville City Council

**THRU:** Susan Norton, Chief of Staff  
Chris Brown, Public Works Director

**FROM:** Jonathan Ely, Development and Construction Manager

**DATE:** September 3, 2021

**SUBJECT:** **ADM 2021-000057: Administrative Item (743, 755, AND 769 S WASHINGTON AVE/NIEDERMAN, 563):** Submitted by ZARA NIEDERMAN of 3V Development for property located at the 743, 755, AND 769 S WASHINGTON AVE. The properties are zoned RI-U, RESIDENTIAL INTERMEDIATE - URBAN and contains approximately 0.3 acres total. The request is an appeal of City Engineer determination regarding requirements for sidewalk improvements.

---

**RECOMMENDATION:**

Staff and Planning Commission recommends denial of **ADM-2021-000057** as shown in the attached Exhibit 'A'.

**BACKGROUND:**

The subject properties are located in south Fayetteville and involves the construction of two single family homes, two ADU's, and a duplex (10 total bedrooms) on three lots. This type of development pattern is allowed by right in the development code, and is processed by building permit. The building permits for these projects were submitted on March 31st, April 4th, and April 5th, 2021.

The Unified Development Code Section 171 includes information and requirements related to construction of Streets and Sidewalks. More specifically, section 171.13 Property Owner To Construct Sidewalk or Contribute Cost of Sidewalk describes sidewalk requirements for building permits. The City Engineer administers this section of code and is required to perform a review of all building permits to determine if sidewalk requirements apply. As such, a sidewalk review is assigned to each building permit submitted.

During review of sidewalk requirements Engineering Staff reviews the applicability, requirements and guidance of UDC 171.13. In this instance there is an existing sidewalk present along the frontage of these properties. However, it is 4ft wide, and located at the back of curb, which does not comply with the Master Street Plan that requires a 6ft wide sidewalk with 6ft wide greenspace. Thus, a determination was made that the old sidewalk must be removed and new sidewalk installed according to the master street plan. These comments were made on the permit reviews, requesting the applicant show removal of the old sidewalk and installation of new sidewalk.

*Request:* The applicant seeks to appeal the staff determination, and the subsequent Planning Commission determination that new sidewalks are required to be constructed according to master street plan for residential building permits at 743, 755, and 769 S Washington Avenue. The applicant states that the requirements do not meet the Rational Nexus and Rough Proportionality test, are illegal and bad policy as they go against stated city goals for infill priority.

*Staff Findings:* Staff recommends denial of this proposed appeal, finding that the sidewalk requirements are necessary to comply with the Unified Development Code, and do bear rational nexus and rough proportionality to the project due to the increased impact of 2 houses, 2 ADUs, and 1 duplex on the site consisting of 10 total bedrooms.

When evaluating sidewalk requirements for building permits city staff first reviews the property to determine if there is an increase in density occurring on the site, and therefore an increase in impact. If no increase in density is proposed, then no sidewalks or fees in-lieu are required. If density is increasing, and therefore an impact created, staff reviews the project for compliance with the Master Street Plan, and evaluates options for construction vs. fee in-lieu as described in UDC 171.13.

The attached staff report presented to the Planning Commission on August 23, 2021, addresses several examples of where this policy has been adopted, and provides detailed investigation into City Engineering's determination for this specific site. The City Attorney's office, as well as the Planning Division also issued memos offering recommendations of denial into this matter, also attached to the full Planning Commission report for consideration.

**DISCUSSION:**

At the August 23, 2021 Planning Commission meeting, Commissioners voted to deny the applicant's appeal with a vote of 4-3-1 (Commissioner Sharp recused). Commissioners voting against the applicant's appeal found that there was not an adequate hardship present in order to grant the appeal, and that the City Engineering division was acting in accordance with the ordinance. Commissioners voting in favor of the applicant's appeal found that while staff was acting in accordance with the ordinance, argued that given the existing sidewalk present on the site, the applicant could expect to keep what was currently present to maintain consistency with the rest of the street. One member of the public spoke against the appeal, finding that there is a public good associated with building a "sidewalk to nowhere" with the understanding that it will eventually connect to a full sidewalk.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

- Exhibit 'A'
- Planning Commission Staff Report

ADM-2021-000057

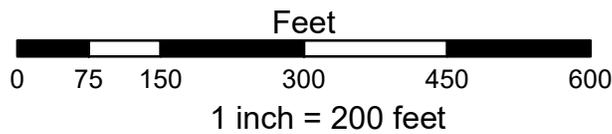
# 3V Development

EXHIBIT 'A'  
ADM-2021-000057

Close Up View



-  Neighborhood Link
-  Urban Center
-  Planning Area
-  Fayetteville City Limits
-  Trail (Proposed)



-  RSF-18
-  RI-U
-  Downtown General
-  Neighborhood Conservation
-  P-1



**TO:** Fayetteville Planning Commission

**FROM:** Jonathan Ely, Development and Construction Manager

**MEETING DATE:** August 23, 2021 **Updated with PC hearing results from 8/23/2021**

**SUBJECT:** **ADM 2021-000057: Administrative Item (743, 755, AND 769 S WASHINGTON AVE/NIEDERMAN, 563):** Submitted by ZARA NIEDERMAN of 3V Development for property located at the 743, 755, AND 769 S WASHINGTON AVE. The properties are zoned RI-U, RESIDENTIAL INTERMEDIATE - URBAN and contains approximately 0.3 acres total. The request is an appeal of City Engineer determination regarding requirements for sidewalk improvements.

---

**RECOMMENDATION:**

Staff recommends denial of **ADM-2021-000057**.

**RECOMMENDED MOTION:**

"I move to deny **ADM-2021-000057**."

**BACKGROUND:**

The subject properties are located in south Fayetteville and involves the construction of two single family homes, two ADU's, and a duplex (10 total bedrooms) on three lots. This type of development pattern is allowed by right in the development code, and is processed by building permit. The building permits for these projects were submitted on March 31<sup>st</sup>, April 4<sup>th</sup>, and April 5<sup>th</sup>, 2021.

The Unified Development Code Section 171 includes information and requirements related to construction of Streets and Sidewalks. More specifically, section 171.13 Property Owner To Construct Sidewalk or Contribute Cost of Sidewalk describes sidewalk requirements for building permits. The City Engineer administers this section of code and is required to perform a review of all building permits to determine if sidewalk requirements apply. As such, a sidewalk review is assigned to each building permit submitted.

During review of sidewalk requirements Engineering Staff reviews the applicability, requirements and guidance of UDC 171.13. In this instance there is an existing sidewalk present along the frontage of these properties. However, it is 4ft wide, and located at the back of curb, which does not comply with the Master Street Plan that requires a 6ft wide sidewalk with 6ft wide greenspace. Thus, a determination was made that the old sidewalk must be removed and new sidewalk installed according to the master street plan. These comments were made on the permit reviews, requesting the applicant show removal of the old sidewalk and installation of new sidewalk.

Below is a summary of correspondence since:

- April 14, 2021 - Mr. Niederman emailed engineering review staff inquiring about the

requirements and asking for clarification of why new sidewalk was required since there was already existing sidewalk there.

- April 15, 2021 - Engineering Staff replied referencing the requirements of UDC 171.13.
- July, 15, 2021 - Mr. Niederman then emailed Chris Brown, City Engineer and Public Works Director asking for more information about city sidewalk plans, and stating he did not feel it was his requirement to construct the city sidewalk.
- July 22, 2021 – Chris Brown responded with information about sidewalk construction and city work plans. He also confirmed the final determination that sidewalk was required for these permits, and informed Mr. Niederman of his right to an appeal.
- July 23, 2021 – Mr. Niederman responded to Chris Brown letting him know he did not agree with the decision, citing several reasons.
- July 30, 2021 – Mr. Niederman submitted this request to appeal the City Engineer determination regarding sidewalk requirements.

**Proposal:** The applicant seeks to appeal the staff determination that new sidewalks are required to be constructed according to master street plan for residential building permits at 743, 755, and 769 S Washington Avenue. The applicant states that the requirements do not meet the Rational Nexus and Rough Proportionality test, are illegal and bad policy as they go against stated city goals for infill priority.

#### **DISCUSSION:**

Staff recommends denial of this proposed appeal, finding that the sidewalk requirements are necessary to comply with the Unified Development Code, and do bear rational nexus and rough proportionality to the project due to the increased impact of 2 houses, 2 ADU's, and 1 duplex on the site consisting of 10 total bedrooms.

When evaluating sidewalk requirements for building permits city staff first reviews the property to determine if there is an increase in density occurring on the site, and therefore an increase in impact. If no increase in density is proposed, then no sidewalks or fee's in lieu are required. If density is increasing, and therefore an impact created, staff reviews the project for compliance with the Master Street Plan, and evaluates options for construction vs. fee in-lieu as described in UDC 171.13. Below is a summary of that exercise for these properties (staff determination in red)

*(2) The property owner may request a waiver to §171.13(A)(1) requiring sidewalk construction. The City Engineer shall review the following factors to determine whether or not to grant a waiver:*

*(a) Pedestrian traffic generators such as parks and schools in the area. Two parks are located within ½ mile of this property. Walker Park, and Jefferson Park. In addition, the Fayetteville Senior Center, Walker Park Trail, and Frisco Trail are within ½ mile*

*(b) The existence of a sidewalk network in the area. There is a partial sidewalk network in this area, generally consisting of existing 4ft wide sidewalk at back of curb on one side of the street.*

*(c) The density of current and future development in the area. The density of the proposed development and area is increasing. On the subject property 1 single family home existed prior to 2017, which was removed, and now 2 single family homes, 2 ADU's, and 1 duplex for 10 total bedrooms is proposed.*

*(d) The amount of pedestrian traffic likely to be generated by the proposed development. Due to increased density, and walkable area, it is likely that the development will generate increased pedestrian traffic.*

*(e) Whether the terrain is such that a sidewalk is physically practical and feasible, and the extent to which trees, ground cover and natural areas would be adversely impacted by the construction of the sidewalk. **The terrain is flat, and no significant trees are present which would cause issues with construction of the sidewalk.***

*(f) The overall need for a sidewalk to be constructed on the lot.*

As you can see from the results of this exercise, all categories are justifiably met, which means the sidewalk should be constructed.

The appeal request letter goes into details related to legality of the sidewalk requirements and that enforcement of these requirements does not meet the rough proportionality or rational nexus tests. While engineering staff will defer to the City Attorney Memo about legality of the city ordinances compared to cases summarized in the request, we would like to describe a few examples of how engineering staff reviews these instances for rough proportionality and rational nexus.

In this instance, the project overall is 3 lots, with a total street frontage on Washington Avenue of 100 feet. The proposed improvements for the site are 2 single family homes, 2 ADU's, and 1 duplex for a total of 10 bedrooms. The master street plan calls for a 6ft wide sidewalk and 6ft wide greenspace. Estimate cost of the sidewalk at \$5 / square foot comes to \$3,000 for the total (600 square feet of sidewalk). While this does not include all costs associated with the requirements, we mention this to give a ballpark and frame of reference for the cost of improvements being discussed. In engineering staff's opinion, this improvement carries nexus that is comparable and directly associated to the level of additional density on the site which will generate additional vehicular traffic and pedestrian traffic.

For further background, the following are 4 examples of recent projects, all in the same general location in south Fayetteville, all had sidewalk construction requirements.

**308, 314, and 318 Martin Luther King Jr Blvd**

**Completed April 2021  
2 duplexes, 1 single family home  
1 single family home existed on this lot prior to 2010**



This project consisted of 2 duplexes, and 1 single family home, with approximately 105 linear feet of frontage on Martin Luther King Jr Blvd. Sidewalk was required with the project and constructed according to master street plan (which required only 5ft wide sidewalk at the time). Estimated total costs for construction of this sidewalk is \$2,625. For comparison of costs, these properties have a combined value of approximately \$1.23 million based on county sales data. So, the cost of the sidewalk was estimated to be 0.2% of total value of the properties. It seems very reasonable that this is roughly proportional to the impact of the development.

**101, 107, 115, 117, 151, 163, and 187 E 9<sup>th</sup> Street**

**Completed February 2019**

**7 single family homes**

**2 single family homes on these lots prior to 2007**



This project consisted of 7 single family homes, with approximately 310 linear feet of frontage on E 9<sup>th</sup> Street. Sidewalk was required with the project and constructed according to master street plan (which required only 5ft wide sidewalk at the time). Estimated total costs for construction of this sidewalk is \$7,750. For comparison of costs, these properties have a combined value of approximately \$1.38 million based on county sales data. So, the cost of the sidewalk was estimated to be 0.5% of total value of the properties. It seems very reasonable that this is roughly proportional to the impact of the development.

**930, 942, and 954 S College Avenue**

**Completed July 2019  
3 single family homes  
1 single family homes on these lots prior to 2014**



This project consisted of 3 single family homes, with approximately 100 linear feet of frontage on S College Ave. Sidewalk was required with the project and constructed according to master street plan (which required only 5ft wide sidewalk at the time). Estimated total costs for construction of this sidewalk is \$2,500. For comparison of costs, these properties have a combined value of approximately \$1.26 million based on county sales data. So, the cost of the sidewalk was estimated to be 0.2% of total value of the properties. It seems very reasonable that this is roughly proportional to the impact of the development.

**1320, 1348, and 1356 S College Avenue**

**Completed October 2019**

**3 single family homes**

**1 single family homes on these lots prior to 2014**



This project consisted of 3 single family homes, with approximately 98 linear feet of frontage on S College Ave. Sidewalk was required with the project and constructed according to master street plan (which required only 5ft wide sidewalk at the time). Estimated total costs for construction of this sidewalk is \$2,450. For comparison of costs, these properties have a combined value of approximately \$1.19 million based on county sales data. So, the cost of the sidewalk was estimated to be 0.2% of total value of the properties. It seems very reasonable that this is roughly proportional to the impact of the development.

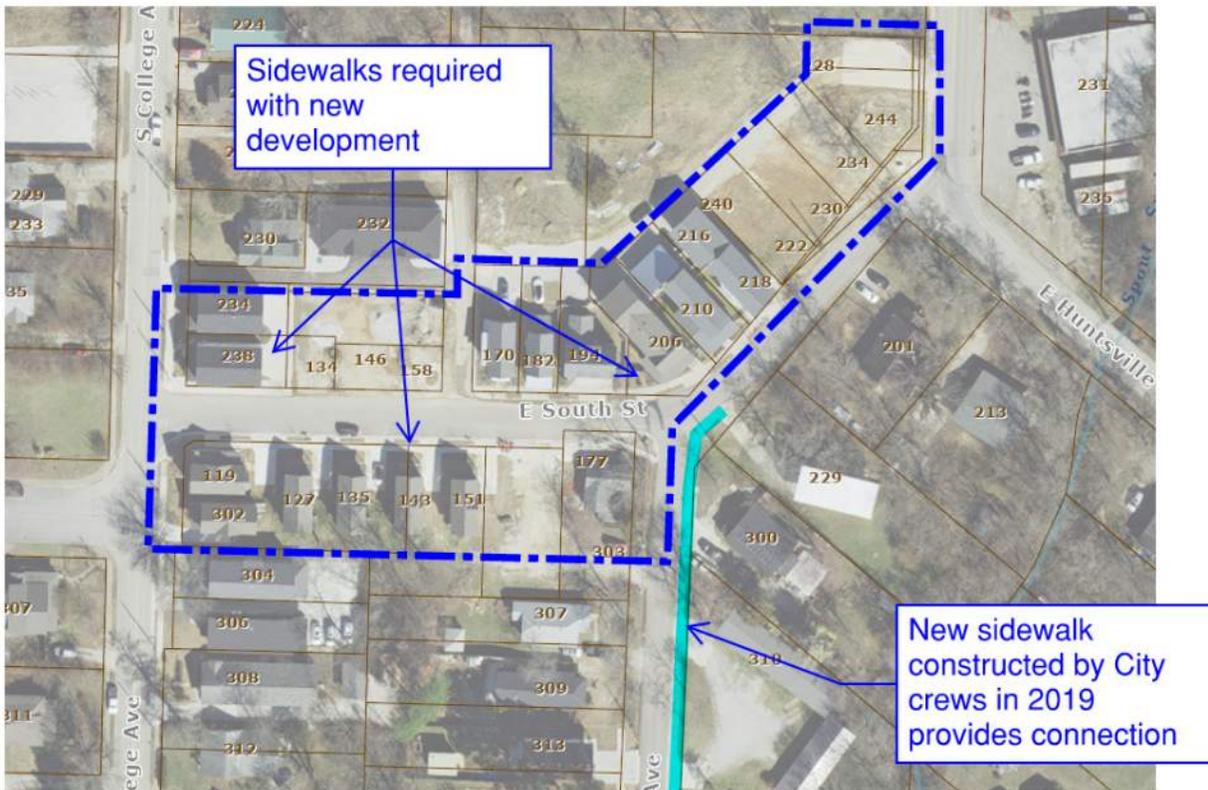
**DISCUSSION** *(continued)*:

A separate point of contention by the applicant is that engineering inspectors routinely fail sidewalk inspections because the sidewalk does not comply with ADA guidelines. This causes new concrete to be removed and replaced which causes project delays, increases costs, uses more resources, and puts more concrete in the landfill.

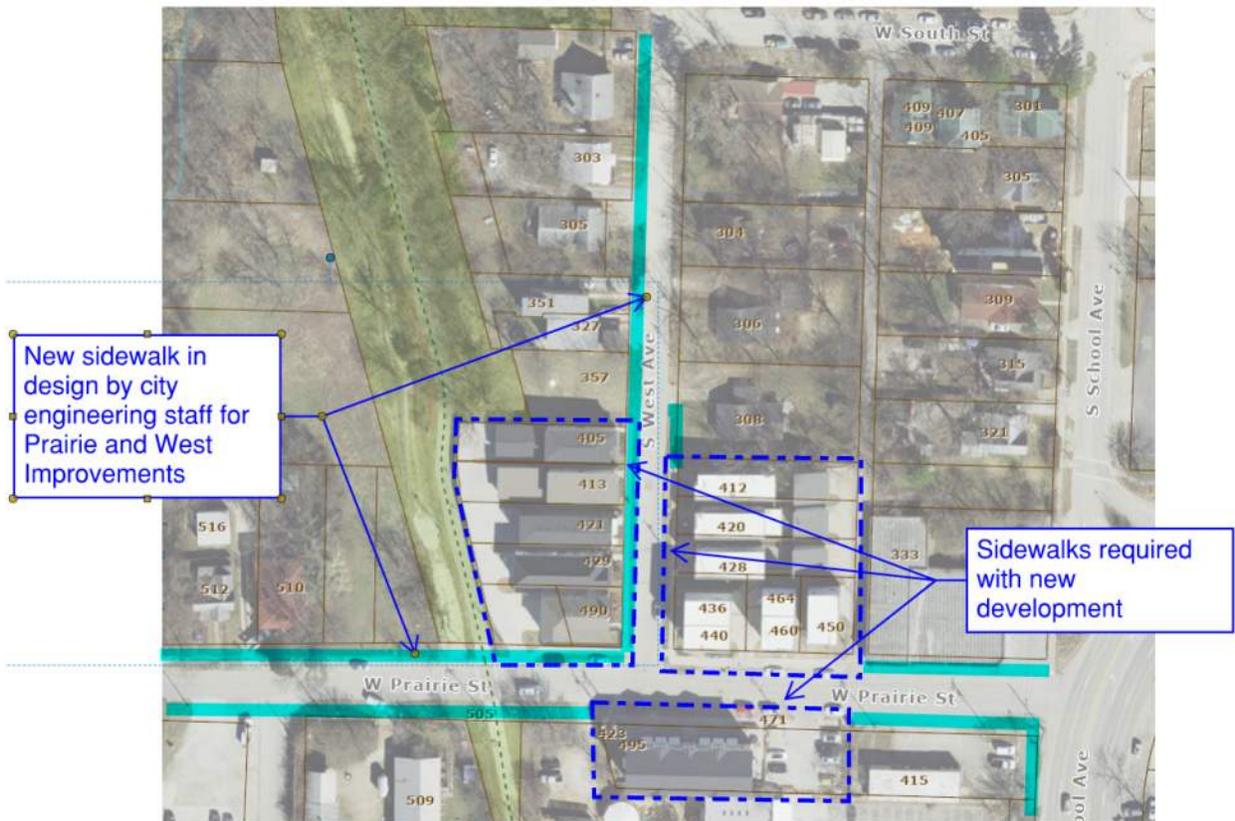
All new sidewalks in the city right of way are required to be built according to city standards and details, which also includes ADA compliance. These requirements are readily available to contractors and developers, and we encourage them to check themselves ahead of pouring concrete. In addition to this, we have implemented a “Pre Pour” sidewalk inspection where engineering inspectors visit the site ahead of pouring concrete to check the forms. Yet unfortunately, we see instances where things happen during pouring and the contractors do not check for themselves as they are performing the work. This results in a failed inspection and requires removal and replacement of any sections that do not comply with the standards. Ultimately the failed inspection, increased cost and wasted resources are the fault of the contractor who did not install the sidewalk correctly the first time. Engineering staff does not have the latitude to pick and choose when these requirements are enforced, and essentially holding those doing infill projects to a lower standard.

The appeal letter goes on to make several cases of “sidewalk to nowhere” claiming that the sidewalk improvements “add significant costs to projects, without clear benefit”. While this does happen temporarily the long-term expectation is that as an entire area of town redevelops like what is occurring in much of south Fayetteville, that over time the sidewalk infrastructure is built out. It is also more convenient and better for coordination if the sidewalk is built at the same time as the houses, so proper coordination can occur. When the city has to come back and construct the sidewalks in front of existing developments, it causes significant disruption to the citizens, and can in some cases cause significant impacts or grading on private property if the sidewalk was not properly coordinated. With sidewalks constructed at the time of development, the city can simply connect on to each end. There are also many examples of where city sidewalk has been required with development which then resulted in improved connects, and city projects to complete these connections. Here are a few examples:

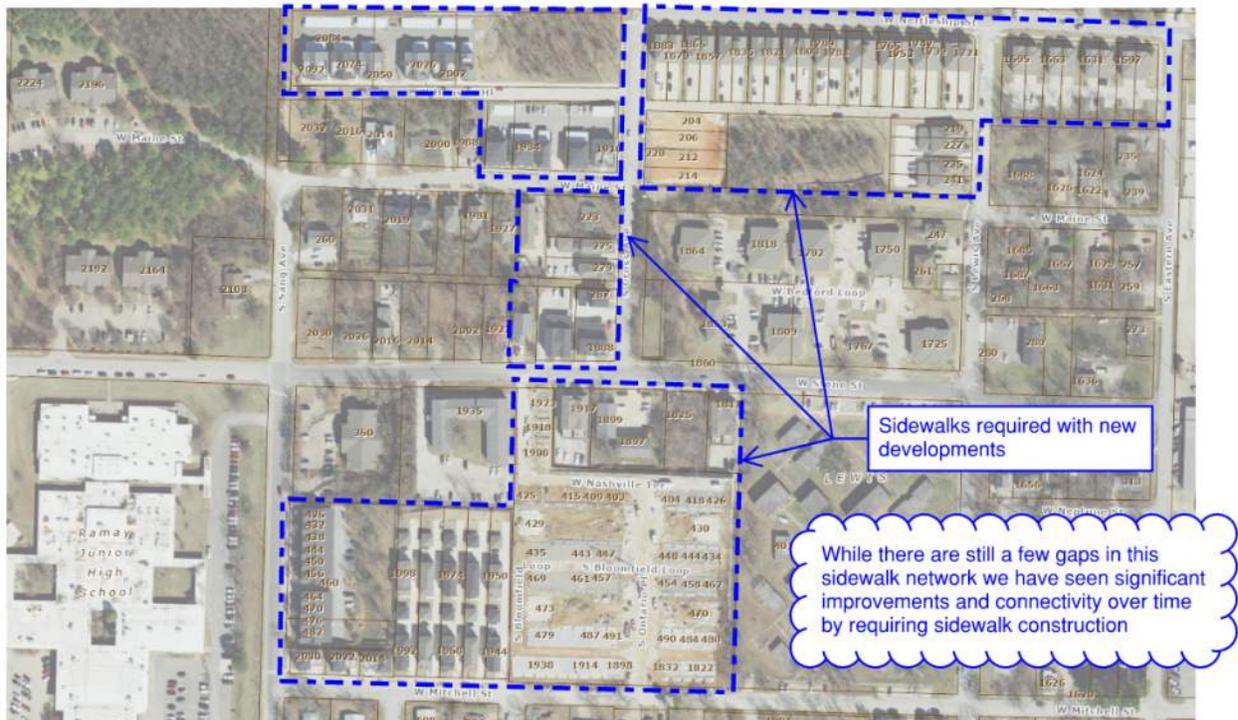
### E South Street and Washington Avenue



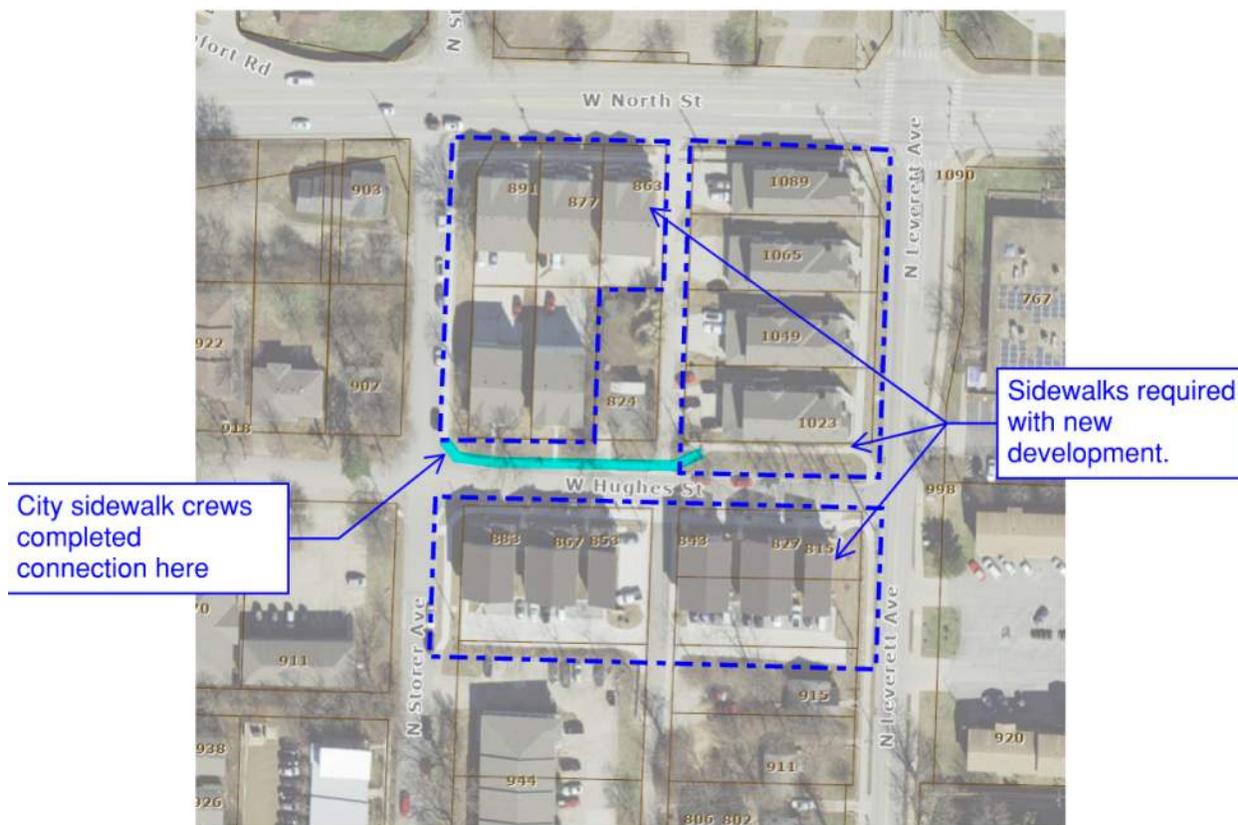
## Prairie Street and West Avenue



## Sang, Mitchell, Stone, Cross, Nettleship



Leverett, North, Hughes, Storer



*Public Comment:* No public comment has been received on this item.

**RECOMMENDATION:** Staff recommends denial of ADM-2021-000057.

<b>PLANNING COMMISSION ACTION:</b> Required <u>YES</u>
Date: <u>August 23, 2021</u> <input type="checkbox"/> Tabled <input type="checkbox"/> Approved <input checked="" type="checkbox"/> Denied
Motion: Garlock (to deny)
Second: Sparkman
Vote: 4-3-1 (Sharp recused)

**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- Applicant Request Letter
- Planning Memo

- City Attorney Memo
- Relevant Code Sections UDC 166.04 and UDC 171.13
- One Mile Map
- Close-up Map
- Site Plan

7/30/2021

Zara Niederman  
3V Development  
223 E 7<sup>th</sup> St.  
Fayetteville, AR 72701

Commissioner Johnson  
Planning Commission  
City of Fayetteville  
Regarding Appeal of Sidewalk Condition of Approval

Dear Commissioner Johnson:

I am writing to appeal a decision by the Engineering Department to require me, as part of a development project to remove an existing sidewalk on South Washington Ave, and replace it with a new sidewalk that to meet the standards of the Master Street Plan. After reading through case law on exactions in development, and speaking with an attorney, I believe that the City's requirement does not meet the test of **Rational Nexus and Rough Proportionality**. In addition, whether this is legal or not, I believe the Engineering Departments determinations are counter-productive to the policy stated in City Plan 2040 – *"We will make appropriate infill and revitalization our highest priorities: encouraging the development or redevelopment of vacant, mostly vacant, and underdeveloped property."*

Commissioner Sharp was the architect on the project and we have not discussed this sidewalk variance in relation to this project. Typically he would recuse himself from this discussion. However, because I believe this is an issue that pertains to all infill development, and not just this specific development, I request that he remain for the discussion, even if he may abstain from voting on this particular issue.

The issue before you is a development of two houses, two ADUs and a duplex on 3 lots on the 700 Block of S Washington. The houses are 2Br homes, the ADU's are 1 bedroom each and the duplex has two bedrooms per side. In total, there are 10 bedrooms for this development. It has a paper alley in back, which we build out to provide rear-load parking. There is an existing sidewalk that is right at the edge of S Washington Street. When we created lot line adjustments, the City required us to dedicate land to the Master Street Plan Right of Way. Upon submitting the building permit applications, the Engineering Department, in order for our permits to be approved, is requiring us to remove the existing sidewalk and move it the back of the Right of Way. While I understand the reasoning that the Engineering Department would like to have us do this, and I believe the Master Street Plan in general is a reasonable plan, this requirement has several problems. First I will address the legal issues. Then I will address the policy implications.

The requirement of the Engineering Department to build a sidewalk here as part of a development is an exaction. In order for an exaction to be considered constitutional, and not an unconstitutional taking without compensation, it must pass several tests of Nexus. Courts uniformly strike down land development conditions which are not so connected. Generally this includes attempts to remedy existing infrastructure deficiencies (*Street and Road Exactions after Dolan* <https://landuselaw.wustl.edu/STREXAC.html>).

In Dolan vs City of Tigard, the US Supreme Court adopted a three-part test:

- 1) Does the permit condition seek to promote a legitimate state interest?
- 2) Is there an essential nexus between the legitimate state interest and the permit condition?
- 3) Is there a required degree of connection between the exactions and the projected impact of the development – a “**Rational Nexus**”?

In Dolan vs City of Tigard, the court ruled that the first two were affirmative. It may be found that we have a similar case here. The Court, however, determined that the City must make some individualized determination that the required action is related both in nature and extent to the impact of the proposed development. In other words, the Engineering Department’s requirement must have a “**Rough Proportionality**” to the impact of the development. In Nollan vs California Coastal Commission, the Commission required the Nollans dedicate an easement across their property. The US Supreme Court concluded there was no nexus between the development condition and the public burden created by the development. Justice Scalia stated that since there was no nexus, the condition was “not a valid regulation of land, but an out-and-out plan of extortion.” Given that there is already a sidewalk here, this property being an infill location, and there was previously housing in this location, I would contend that the Engineering Department’s requirement is not roughly proportional to the impact.

In Property Group Inc. vs Planning and Zoning Commission of the Town of Tolland, the Connecticut Supreme Court struck down a road widening condition, finding that the road problems were pre-existing and there was no substantial evidence the widening was necessitated by the development. Again, given that there is already an existing sidewalk here, if the City deems that the infrastructure is deficient, that is not just cause to require this development to repair the deficiencies.

In Holmdel Builders Assn vs Township of Holmdel, the court found that an assessment is subject to challenge, only if the developer is required to pay a disproportionate share of the cost of improvements that also benefit other persons. As this new sidewalk is in an infill location, and not in a new subdivision built out by a single developer, it is clear that the sidewalk will have the potential to benefit the whole neighborhood, and not just this development. As I have told the Mayor, and the Engineering Department, the economics of sidewalks, and most Public Goods, for infill developers, is completely different from the economics of sidewalks for new subdivisions, where the strong majority if not the totality of benefits of the sidewalks will accrue to the developer, and then the occupants. This is entirely different from infill lot development. From Municipal Exactions and Development Conditions ([https://www.nvbar.org/wp-content/uploads/NevLawyer\\_June\\_2013\\_Municipal\\_Exactions.pdf](https://www.nvbar.org/wp-content/uploads/NevLawyer_June_2013_Municipal_Exactions.pdf)) , Nicholas Vaskov, Esq states that exactions most at risk are (among several others) “those that appear to be an attempt to force a property owner to bear a public burden which, in fairness, should be borne by the public as a whole.”

In Nicholas, Nelson and Juergensmeyer, 1991 it states that “Courts are more likely to uphold impact fees, and the fees are more successfully and logically calculated, when the local government has a plan - which anticipates growth - **which shows how and when public facilities needs are likely to be generated in terms of type and location of facility.**” In City of Fayetteville v IBS, Inc . Arkansas’ Supreme Court struck down a park impact fee because the plaintiff , a residential developer, could not determine if the city would spend the fees to construct or improve parks that benefitted his subdivision.

In my request to Chris Brown, Head of Engineering, I asked when the rest of the section of S Washington would be upgraded to the Master Street Plan. His response was that “These [sidewalk]

requirements are independent of City workplans for sidewalks, and are not predicated on a plan or funding to make other improvements in the area.” I hope you can see how problematic that is, both from a legal standpoint, as well as a planning and policy standpoint. As you may be aware, when the City requires a fee-in-lieu for a development project, and does not use those funds responsibly for a project that has a nexus to the development project, or in a required amount of time, those funds must be returned to the developer. This is a comparable situation where the City requires a developer to make improvements, but the City has no clear budget or timeline for how it will make the corresponding improvements to create the network. This is troubling to me not just that it is happening right now, but the fact that I have brought this up numerous times over the last 5 years, and the Engineering Department has dismisses it every time.

I hope at this point I have shown you how the sidewalk requirement for this specific project does not meet the rational nexus/rough proportionality test and is therefore an unconstitutional taking. I hope you will now also agree that, in more general terms, the standard sidewalk policy the City has for Infill Development, likely does not meet the “rational nexus/rough proportionality test. I would now like to address the Public Policy implications of the Engineering Departments sidewalk policy.

As stated above, City Plan 2040 states that Goal 1: *“We will make appropriate infill and revitalization our highest priorities”* While City Plan 2040 is fairly new, this first priority was the same for the City Plan 2030, which was adopted 10 years ago in 2011. As Economics 101 would tell us, we should incentivize those things that we want, and disincentivize those things that we don’t want. Thus in City Plan 2040, the second objective for Goal 1 is: **Recognize the benefits and cost savings of utility and road infrastructure that already exists in the core of the city and develop a fee structure that benefits infill over greenfield development”** (pg 23)

In more detail it states *“Impact fees must have a rational nexus to actual development impacts. The current fee structure is the same for infill as for greenfield development placed far from the urban cores. Dispersed development requires more infrastructure per unit resulting in higher per unit costs, and additional maintenance costs. Development in the city core has access to existing infrastructure that is already available and currently maintained. There are impacts from infill development, but when such development encourages walking or transit use, thereby reducing the burden on the existing transportation system, a lower fee or exemption may be warranted. The City should allocate resources to reviewing and updating the impact fee structure for Fire, Police, Water and Sewer services to better balance the true impacts of development based on proximity to these services. Similarly, the City should adopt an infill boundary, within which development is eligible for cost-sharing and/or reduced fees”*

The Mayor and the Engineering Department acknowledge this in their plan, yet they choose to completely disregard their own advice. This recommendation is not buried in the report. This is the SECOND recommendation for the #1 goal that we state is our “HIGHEST PRIORITY”. This is in no way ambiguous. We might consider giving some slack since City Plan 2040 was adopted in June 2020, and so, it would make sense that it would be hard to integrate all of these ideas in the culture of the department. However, this is the same exact recommendation that was in City Plan 2030 (page 10-4) from 2011, 10 years ago! At that time, it was also, the SECOND recommendation for the #1 Goal, that City Plan 2030 stated was its “HIGHEST PRIORITY”. The Mayor now was the Mayor then. Much of the Engineering Staff that is in place now, has been working for many years now, if not since City Plan 2030 was adopted.

While requiring infill development to add new sidewalks does add a cost to infill, and thus creates some dis-incentives, it may also create a public good, and therefore I can see the Mayor and the Engineering Department wishing have developers help create a more walkable City. I do applaud that vision. However, there are two factors that make this more troubling to.

First, it is very common for the City to require sidewalks, and then after being poured, the City fails the inspection because it doesn't meet the ADA standards, and then requires the developer to remove the sidewalk and repour it. This delays the final occupancy of the home, it costs more for the developer, it uses more human resources, it uses more concrete and puts more concrete in the landfill. If this were a rare occurrence, it would be one thing. However, it is a consistent pattern. Below is a picture of just the latest sidewalk poured, and now torn up. This is sidewalk from E MLK at Willow from Thursday July 22, with the picture taken, the same day I received notice from Chris Brown that they would still require me to install the sidewalk.



Just yesterday, on a project on S Washington Ave and 13<sup>th</sup> St, after paying a fee-in-lieu for sidewalks to avoid this, after doing two pre-pour inspections for the driveway, the Engineering Department failed the final inspection of the driveway because they said the culvert underneath was not up to code. They had two pre-pour inspections to let us know, as well as months of building inspections. However, they chose to notify us of this, at the end of the project after we had already poured concrete.

When you combine this standard practice with the fact that often times the sidewalk that was just poured connects to the rest of the sidewalk that is not ADA accessible, and there is no budget or timeline for when the City plans to actually make the remaining sidewalk ADA accessible, then you are now doubling the cost for something that has very little additional effectiveness.

Finally, in addition to often requiring developers to pour and repour sidewalks, often times the City is requiring sidewalks to be installed where, instead of the remainder of the sidewalk being in poor condition and not ADA, there is in fact no connecting sidewalk at all – and no budget or timeline for the City to make that network connection. Below I will give pictures of just a few of the numerous examples of these “Sidewalks to Nowhere”.

We can pretend that by having private developers build these small segments of sidewalks now we are saving the City money in the long term when they are ready to connect them. What is really happening in many cases is that we are adding significant costs to projects, without a clear benefit. In fact we are actually often doubling the cost of sidewalks in many cases, as well as slowing down the construction process, and using more subcontractors. We can again pretend that this is just a cost that developers have to deal with as a business expense. However, these costs are ultimately born by the residents, not the developers, in the form of higher sales cost and mortgages or higher rents.

I hope you can now see why I believe the City sidewalk policy is unconstitutional in many cases; it is contrary to the recommendations of City Plan 2040; it produces ill-will between developers and the City, and it is ultimately bad public policy.

Thank you for taking the time to consider this important topic.

Regards,

*Zara Niederman*

Zara Niederman

3V Development

Here are “sidewalks to nowhere” we built on 900 Block of S College. Does the City have a plan to connect these sidewalks ever?



Here’s a look at the sidewalks built on 800 block of S Wood? Who do these sidewalks benefit if there is not a connection made?





And below is the most telling story of a “sidewalk to nowhere.” Here is a sidewalk that was installed on S Locust. The first one was behind Castle Rental. You can see the new sidewalk installed. What you can’t see is the sidewalk behind Fastenal. I will presume that it was built in 2008 when that building was built. The reason you can’t see it is because it is overgrown. The reason it is overgrown is because there is no reason for it’s use.



Here is the sidewalk that is overgrown







**TO:** Jonathan Ely, Development and Construction Manager

**FROM:** Jessie Masters, Development Review Manager

**DATE:** August 18, 2021

**SUBJECT: Planning Commission Planning Staff Comments for  
ADM-2021-000057**

---

**Background:**

The applicant is appealing a determination by the City Engineer that sidewalks must be constructed to the Master Street Plan standard in association with an infill residential development project at 743 S. Washington Avenue, to construct two single-family homes, two accessory dwelling units, and one duplex, for an added 6 housing units on a previously undeveloped site.

**Discussion and Recommendation:**

Planning staff agrees with the Engineering Division determination that the developer be required to construct sidewalk to meet the Master Street Plan requirements at the stated location of 743 S. Washington Avenue. Planning staff finds the requirement to be at least roughly proportional to the amount of development activity requested at the site. Based on aerial imagery, the site has been minimally developed since at least 2004, and the added impact of additional residential dwelling units will bring additional pedestrian impact to the site, also meeting the rational nexus test for required infrastructure improvements.

Planning staff also finds that the provision of adequate sidewalk along the property's frontage is not only in line with the requirements as laid out in 171.13 of the Unified Development Code, but is also in line with many of the stated and adopted goals as outlined in City Plan 2040.

City Plan 2040 lists 6 main goals:

1. We will make appropriate infill and revitalization our highest priority
2. We will discourage suburban sprawl
3. We will make compact, complete, and connected development the standard
4. We will grow a livable transportation network
5. We will assemble an enduring green network
6. We will create opportunities for attainable housing

Planning staff recognizes that what the developer proposes is an infill development project; the development will bring additional residential development to a previously underdeveloped site within an established neighborhood, and help fulfill Goal #1. Staff also recognizes that there are added benefits to developing within established neighborhoods; existing infrastructure, proximity to walkable services and amenities, and a diversity in housing stock both in age and type. Planning staff, however, also finds that the goal to make compact, complete, and connected

development the standard throughout the city (Goal #3) outlines an obligation to provide adequate pedestrian infrastructure where there is added pedestrian impact. Planning staff finds that the City's requirement to construct sidewalk in line with the adopted Master Street Plan with additional development impact on a site is very much in line with the stated goal. Further, the requirement is in line with the goal of growing a livable transportation network (Goal #4) by helping to ensure better pedestrian walkability. This can be achieved through the construction of adequately wide sidewalks and greenspace separation from the vehicle path. The Residential Link street section was specifically design with these goals in mind.

Additionally, a focus of the recently adopted City Plan 2040 was establishing what is "appropriate" infill as describe in Goal #1. An element of this was a survey. This included several questions about community perceptions of infill and what characteristics of infill development should be prioritized. While some elements, such as preserving single building type neighborhoods (allowing only single-family homes, for example) and availability of on-street parking were marginally favored, others were overwhelmingly noted as important. One of these was that an infill project is "friendly to pedestrians and improves the ability to walk in a neighborhood". While the City plays a role in this through sidewalk construction programs, it is also vital for individual infill projects that are increasing density and intensity, along with creating a new for pedestrian facilities to also bear a proportion of their impact.

Planning staff certainly agrees that making infill development less cumbersome and more incentivized is a high priority, and staff actively seeks to find ways to make that more attainable through appropriate code changes. However, staff does not agree that minimizing other City priorities is the best way to get there, and again supports City Engineering's determination in this instance not only meets ordinance, but fulfills other stated goals as outlined by City Plan 2040.



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: **Jonathan Ely, Development and Construction Manager**

CC: **Jessie Masters, Development Review Manager**  
**Chris Brown, Public Works Director**  
**Jonathan Curth, Development Services Director**

FROM: **Blake Pennington, Assistant City Attorney** 

DATE: **August 18, 2021**

RE: **Appeal of Sidewalk Conditions of Approval - South Washington**

You asked me to address some of the points in Zara Niederman’s appeal of some of the conditions of approval for his project on South Washington.

### Recusal of Planning Commissioners

With respect to the recusal of any Planning Commissioner, their Rules of Order and Procedure provide in Section B.3 that “[n]o member of the Planning Commission with a direct or indirect financial interest in any items before the Planning Commission shall participate in the discussion of or voting on such matter.” An architect on a project has a clear direct financial interest in the project being appealed and, therefore, can neither vote nor participate in any discussion on the appeal.

### Rational Nexus and Rough Proportionality

#### I. Law

The City must first establish that an essential or rational nexus exists between a legitimate public interest and the condition exacted upon the development. Nollan v. Cal. Coastol Com, 483 U.S. 825 , 107 S.Ct. 3141 (1987). The Planning Commission is being asked to consider whether such a valid relationship exists between the construction of multiple residences and the requirement to construct sidewalks. Because those sidewalks

will be used by the additional new residents of the appellant's infill development, it is quite easy to establish this rational or essential nexus.

Assuming the essential nexus requirement is satisfied, the City can only require an owner to dedicate land, construct public improvements, or pay money in "rough proportionality" to the impact that construction of the project causes the City. Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 2320 (1994).

"We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." Id.

The whole rationale restricting the City's right to demand dedications of land or exactions is derived from the Fifth Amendment requirement that "just compensation" be paid for private land taken for public purposes.

"In addition to the requisite nexus, the (Supreme) Court went on to require that the city demonstrate that the degree of the exactions demanded in the condition bears "rough proportionality" to the projected impact of the applicant's request. This requirement ensures that the conditioning of a discretionary benefit does not force 'some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole' in violation of the Just Compensation Clause." Pennell v. City of San Jose, 485 U.S. 1,9 (1988) (citations omitted); Goss v. City of Little Rock, 90 F.3rd 306, 309 (8th Cir. 1996).

## II. City of Fayetteville Requirements

Within the Unified Development Ordinance are requirements in which developers are required to spend money, construct public improvements, or dedicate land that becomes public property. A new residential subdivision builder is required to build the internal streets and sidewalks, install drainage, water and sewer mains, landscaping and parkland (or pay a monetary fee in lieu thereof). Then all of this infrastructure is dedicated free to the City for use of the public.

This is constitutional because all of these dedications and exactions are only needed because the new subdivision was built on undeveloped land and so what the City has required is "roughly proportionate" to the impact of the new subdivision on the City's existing infrastructure and the need to serve the citizens within the new subdivision.

Infill developments are subject to the same tests for dedications and exactions, although they are almost certain to be less burdensome than a greenfield development because of the existing site conditions. Even so, a developer must often still install some

improvements because of increased density or defects/deficiencies in the existing infrastructure. The City can require a developer to repair a deficient sidewalk (whether it is for non-compliance with the Americans with Disabilities Act or non-compliance with the City's standards) because the development is going to add to the potential pedestrian traffic on the site.

### III. Niederman Appeal

Mr. Niederman cites a couple of other cases asserting that they support his appeal. They do not and neither should be used for any purpose by the City in considering this appeal.

First, in Property Group v. Planning & Zoning Comm'n, 226 Conn. 684 (1993), the Supreme Court of Connecticut considered whether the Town of Tolland properly required a developer to make certain off-site highway improvements in connection with the construction of a new subdivision. This case was decided entirely under the local ordinances of Tolland and the statutes of the State of Connecticut that required their local planning and zoning commission to demonstrate a "reasonable and necessary need for an off-site improvement..."

Second, in Holmdel Builders Ass'n v. Holmdel, 121 N.J. 550 (1990), the Supreme Court of New Jersey considered a challenge to the imposition of an off-site improvement assessment. In Holmdel, the funds collected from the challenged assessment were paid into an affordable housing trust. The New Jersey Supreme Court held that the public benefit was disproportionate to any benefit to the developer or the developer's buyers.

Both of the cases cited by Mr. Niederman are related to assessments for or requirements to construct some off-site improvement. Off-site improvements are going to necessarily be more difficult to justify than on-site improvements like sidewalks. The consideration for the Planning Commission is whether the requirement for on-site sidewalks have a rational or essential nexus to the project and whether it is roughly proportional to the impact of the development. Just because an on-site improvement may provide some public benefit, that does not mean the developer is automatically excused from the requirement.

I am attaching a copy of a memo Kit sent to Mr. Niederman in 2019 regarding the constitutionality of the City's sidewalk requirements. Kit's memo ends with the following statement: "**If your housing project adds to the potential pedestrian traffic, then requiring the constructing a sidewalk would be constitutional.**"

### Americans with Disabilities Act

Finally, on the next to last page of Mr. Niederman's appeal, he writes that "it is very common for the City to require sidewalks, and then after being poured, the City fails the inspection because it doesn't meet the ADA standards, and then requires the developer to remove the sidewalk and repour it."

The requirement to construct a sidewalk to Americans with Disabilities Act standards should come as no surprise to any developer. It is not the City's fault that a developer or his sub-contractor who constructed a sub-standard sidewalk was required to fix it. If it had been constructed to the proper standards to begin with, there would be no additional cost or delay in final occupancy of the home because of reconstruction.



OFFICE OF THE  
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: Z Niederman

CC: Andrew Garner, Planning Director

FROM: Kit Williams, City Attorney

DATE: October 18, 2019

RE: **Legal authorization to require builders and developers to install sidewalks**

State law provides sufficient authority for the City to require a builder or developer to install sidewalks if the development increases the possible pedestrians utilizing city sidewalks. A.C.A. §14-56-417 **Regulations to control development of land states at (b)(1)(C): "The standards for improvements to be installed by the developer at his own expense such as street grading and paving, curbs, gutters, and sidewalks; water, storm and sewer mains, street lighting; and other amenities."** (emphasis added)

A.C.A. §14-54-104 **Additional powers of cities of the first class states:**

"In order to better provide for the public welfare, safety, comfort, and convenience of inhabitants of cities of the first class, the following enlarged and additional powers are conferred upon those cities:

"(1)A(i) To regulate the use of **sidewalks**, and all structures and excavations thereunder; **to require the owner** or occupant of any premises to keep the sidewalks in front or alongside the premises free from obstruction, **to build and maintain suitable pavement or sidewalk**

improvements therealong whenever they may become necessary to the safety or convenience of travel, and to designate the kind of sidewalk improvement to be made, the kind of material to be used by the owner or occupant, and the time within which the improvement is required to be completed." (emphasis added).

There are also several other state statutes providing more general power to the City Council to pass ordinances they feel are in the best interest of the citizens' peace, health and safety, comfort and convenience.

Your second question involves the U.S. Constitution which requires any exaction (dedication of right of way, construction of streets and sidewalks, water, sewer, and stormwater infrastructure) to be related to the impact and in rough proportion to the impact upon the type of infrastructure being required of the developer/builder. If your housing project adds to the potential pedestrian traffic, then requiring the constructing a sidewalk would be constitutional.

## Relevant Code Sections UDC 166.04 and UDC 171.13

UDC 166.04 – Required Infrastructure Improvements – Development in the City Limits talks described required improvements and when they should be assessed.

(A) *Generally. Required of developer.*

(1) *On and Off-Site Improvements. On-site improvements are adjacent to or within a project site; such as widening the street along the project street frontage, constructing interior streets and utilities, etc. Off-site improvements are not adjacent to a project; such as the extension of an off-site sewer line to the property boundary, off-site storm drainage improvements, or an off-site intersection improvement, etc.*

(2) *Standards Applicable. Any required on or off-site improvements in the city and within one (1) mile of the city limits shall be installed according to the city's standards; provided on or off-site improvements to roads located outside one mile of the city limits shall be installed to the county's standards. The developer shall be required to bear that portion of the cost of off-site improvements which bears a rational nexus to the needs created by the development.*

(3) *Required Infrastructure Improvements. On and off-site improvements that are roughly proportional and bear a rational nexus to the impact of the development are required for all development within the City of Fayetteville. The developer shall be required to install on and off-site improvements where the need for such improvements is created in whole or in part by the proposed development.*

UDC 171.13 – Property Owner To Construct Sidewalk Or Contribute Cost of Sidewalk describes the requirements associated with sidewalk construction for building permits.

(A) *Requirement. The owner of any property abutting a public street or highway for which a sidewalk is required by the city's Master Street Plan shall construct a sidewalk in accordance with this chapter, along said street or highway upon the receipt of notice issued at the time a building permit is issued.*

(1) *The property owner shall construct the sidewalk in accordance with the specifications provided in the Minimum Street Standards.*

(2) *The property owner may request a waiver to §171.13(A)(1) requiring sidewalk construction. The City Engineer shall review the following factors to determine whether or not to grant a waiver:*

(a) *Pedestrian traffic generators such as parks and schools in the area.*

(b) *The existence of a sidewalk network in the area.*

(c) *The density of current and future development in the area.*

(d) *The amount of pedestrian traffic likely to be generated by the proposed development.*

(e) *Whether the terrain is such that a sidewalk is physically practical and feasible, and the extent to which trees, ground cover and natural areas would be adversely impacted by the construction of the sidewalk.*

*(f) The overall need for a sidewalk to be constructed on the lot.*

*(3) If the City Engineer grants the waiver to construct a sidewalk, the owner shall have an option to construct the sidewalk, or to contribute money in lieu of construction as set forth below:*

*(a) The amount of money in lieu of construction to be dedicated shall be determined based upon the rough proportionality of the impact of the development upon the sidewalk infrastructure needs near the development including consideration of the persons served by the development and approximate pedestrian trip generation rates of the development.*

*(b) Unless the developer presents evidence that the number of persons served by the development and the pedestrian trip generation rates of the development justify a reduced contribution in lieu of the construction of sidewalks, all developments shall make a cash contribution in lieu of the construction of the sidewalk at a rate of \$5.00 per square foot of the sidewalk that normally would have been required. The amount per square foot shall be reviewed by the City Council at least every five (5) years.*

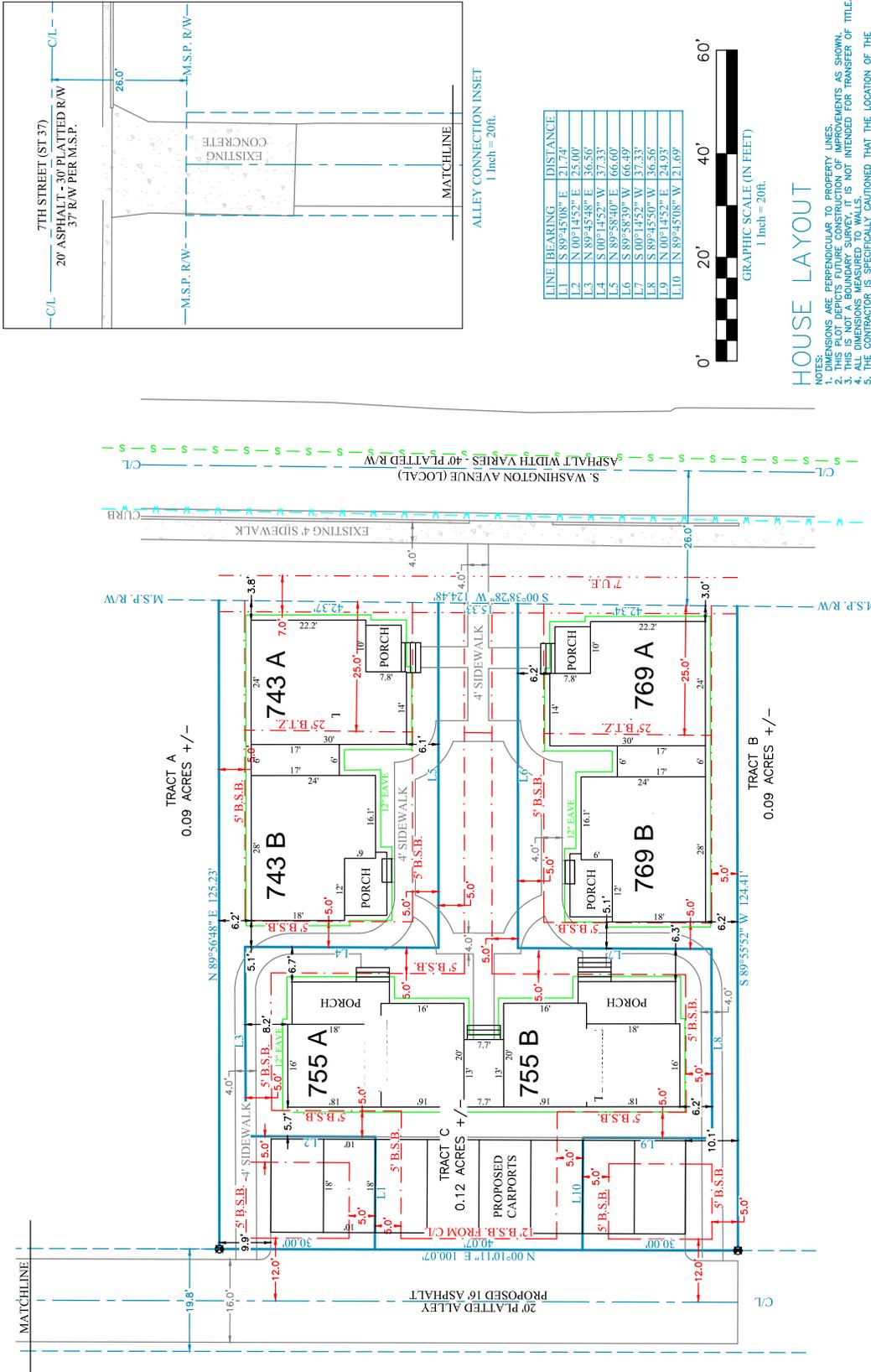
*(c) Contribution in lieu of construction of sidewalks shall be paid or construction of the sidewalks shall be completed before receiving final plat approval, or issuance of a certificate of occupancy.*

*(d) Contributions must be expended within one (1) year to build a sidewalk close enough to serve the project being constructed.*

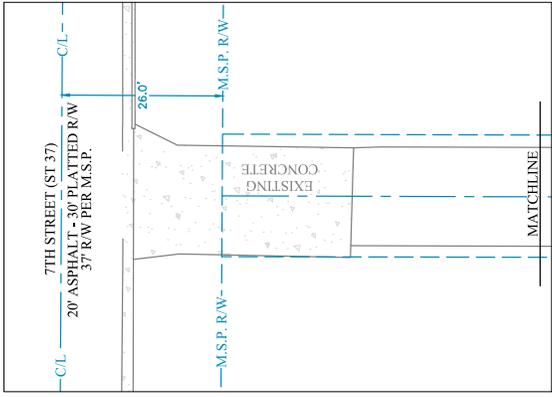
*(e) If the owner voluntarily consents in writing, the contributions may be used to construct sidewalk projects where most needed as determined by the City Engineer.*

*(4) An owner/builder may appeal the City Engineer's refusal to grant a waiver or the administrator's determination of the amount of contribution in lieu of construction to the Planning Commission pursuant to §155.06(D).*

# SITE PLAN



WASHINGTON AVENUE (LOCAL)  
 ASPHALT WIDTH VARIES - 40' PLATTED R/W  
 CURB  
 EXISTING 4' SIDEWALK  
 M.S.P. R/W  
 26.0'



LINE	BEARING	DISTANCE
L1	S 89°45'08" E	21.74'
L2	N 00°14'52" E	25.00'
L3	N 89°45'48" E	36.56'
L4	S 00°14'52" W	37.33'
L5	N 89°58'40" E	166.60'
L6	S 89°58'39" W	166.49'
L7	S 00°14'52" W	37.33'
L8	S 89°45'59" W	36.56'
L9	N 00°14'38" E	24.93'
L10	N 89°45'08" W	21.69'



## HOUSE LAYOUT

- NOTES:
1. DIMENSIONS ARE PERPENDICULAR TO PROPERTY LINES.
  2. THIS IS NOT A PROFESSIONAL SURVEYING AS SHOWN.
  3. THIS IS NOT A BOUNDARY SURVEYING NOT INTENDED FOR TRANSFER OF TITLE.
  4. ALL DIMENSIONS MEASURED TO WALLS.
  5. THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION OF THE BUILDING SHALL BE VERIFIED BY THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THAT THE BUILDING DOES NOT ENCROUGH UPON ANY BUILDING SETBACKS AND OR EASEMENTS.



**LEGEND:**  
 THESE STANDARD SYMBOLS WILL BE FOUND IN THE DRAWING.

- BOUNDARY LINE (MEASURED)
- CENTERLINE OF ROAD
- RIGHT-OF-WAY
- BUILDING EASEMENT
- UTILITY EASEMENT
- WATER LINE
- OVERHEAD POWER LINE
- SEWER LINE
- FOUND 1/2" REBAR

**Bates Associates, Inc.**  
 Engineers • Surveyors • Landscape Architects

7220 S. Pleasant Ridge Dr. • Fayetteville, Arkansas 72704 • 479.442.9350 • Fax 479.251.9390  
 BATES & ASSOCIATES, INC. Copyright 2021

This survey was conducted for the person or persons whose names(s) appear on this plan. This plan is prepared by or under the direct control and accurate title each map thereon. Any reliance on any other fact which conflicts with accurate title each map thereon, is expressed without consent of Bates & Associates, Inc. Surveyors Inc. Surveyors Inc. does not represent the opinion of Bates & Associates, Inc. or the probability of flooding.

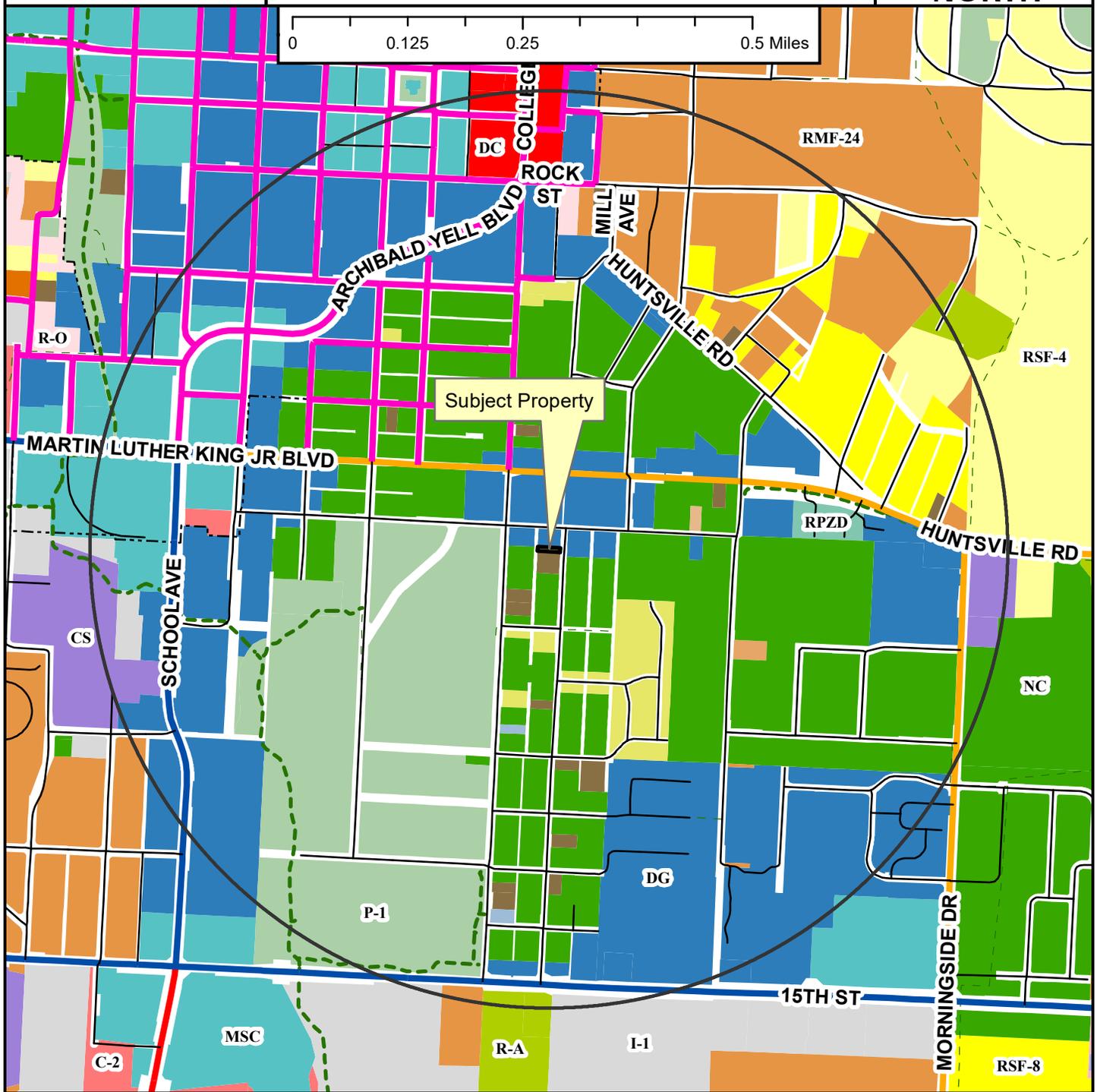
FOR USE AND BENEFIT OF:  
**ZARA NEIDERMAN**  
 ADDRESS:  
**S. WASHINGTON AVE.**  
**FAYETTEVILLE, ARKANSAS**

DATE: 2/9/2021  
 SCALE: 1" = 20'  
 SURVEYED: DT  
 DRAWN: AH & JY  
 REVIEWED: DT  
 COA #1335

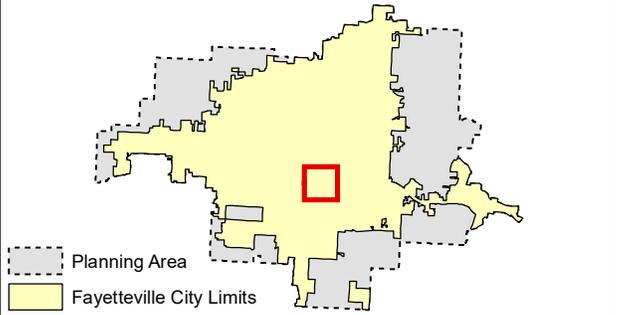
DRAWING #19-077 SP

# 743,755,769 S Washington

One Mile View



- Regional Link
- Neighborhood Link
- Regional Link - High Activity
- Urban Center
- Shared-Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Fayetteville City Limits
- Planning Area

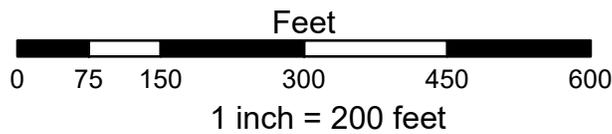


- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
- NS-G
  - RH-U
  - RS-12
  - NS-L
  - Residential-Agricultural
  - RSF-5
  - RSF-1
  - RSF-2
  - RSF-4
  - RSF-7
  - RSF-8
  - RSF-18
- RESIDENTIAL MULTI-FAMILY**
- RMF-6
  - RMF-12
  - RMF-18
  - RMF-24
  - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial
- EXTRACTION**
- E-1
- COMMERCIAL**
- C-1
  - C-2
  - C-3
- FORM BASED DISTRICTS**
- Downtown Core
  - Urban Thoroughfare
  - Main Street Center
  - Downtown General
  - Community Services
  - Neighborhood Services
  - Neighborhood Conservation
- PLANNED ZONING DISTRICTS**
- Commercial, Industrial, Residential
- INSTITUTIONAL**
- P-1

Close Up View



- Neighborhood Link
- Urban Center
- Planning Area
- Fayetteville City Limits
- Trail (Proposed)



- RSF-18
- RI-U
- Downtown General
- Neighborhood Conservation
- P-1