

R-2019-035

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Stephanie M. Yara, Director of Council Services *SMY 9/23/19*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. R-19-150 Adopting Interim Procedures For The Development Review Board Until The First Annual Update To The Integrated Development Ordinance Has Been Completed (Jones), which was passed at the Council meeting of May 20, 2019 by a vote of 9 FOR AND 0 AGAINST.

In accordance with the provisions of the City Charter, your action is respectfully requested.

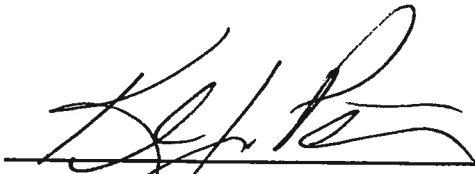
SMY:mh
Attachment

1 **Section 2. The Planning Department shall formally incorporate the changes**
2 **in Exhibit A as a part of the 2019 Integrated Development Ordinance annual**
3 **update process.**

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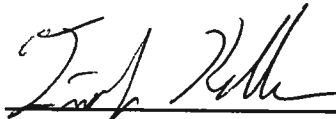
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1 PASSED AND ADOPTED THIS 20th DAY OF May, 2019
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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10 Klarissa J. Peña, President
11 City Council

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13 APPROVED THIS 24 DAY OF May, 2019
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18 Bill No. R-19-150

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24 Timothy M. Keller, Mayor
25 City of Albuquerque

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27 ATTEST:

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31 Katy Duhigg, City Clerk

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Exhibit A to R-19-150

Page	Section	Proposed Change	Explanation
219	5-4(F)(2)(a)	Replace "Variance" with "Waiver" and update cross reference to specific procedure.	Editorial change to track with proposed change to DRB - Variance.
221	5-4(I)(2)	Replace "Variance" with "Waiver" and update cross reference to specific procedure.	Editorial change to track with proposed change to DRB - Variance.
242	5-5(F)(2)(a) 2.b	Replace "Variance" with "Permit" and update the cross reference to the specific procedure accordingly.	All exceptions to standards in Section 5-5 are currently reviewed/decided by DRB as a Variance - DRB. This is proposed to change to be Waivers reviewed/decided by DRB at a public meeting. Carports have had additional review at public hearings prior to the IDO. This would return that review/decision to be closer to the pre-IDO process. See related item for changes to Table 6-1-1 and Subsection 6-6(L).
327	Table 6-1-1	Change requirement to hold public hearings to public meetings for the following DRB decisions: Subdivision of Land - Major, Preliminary Plat; Vacation of Easement or Right-of-way - DRB; and DRB - Variance. Update any references to public hearings related to DRB throughout the IDO accordingly.	DRB is a staff board for technical reviews and does not make discretionary decisions or hold quasi-judicial hearings. This change would return DRB processes closer to pre-IDO processes.
328	Table 6-1-1	Change the title of "Variance - DRB" to "Waiver - DRB" and realphabetize. Renumber related Specific Procedure accordingly. Replace all other references to Variance - DRB throughout the IDO accordingly. Rename "Wireless Telecommunications Facility Waiver" to "Waiver - Wireless Telecommunications Facility" for consistency. Replace all references to this procedure throughout the IDO accordingly.	DRB is a staff board for technical reviews and does not make discretionary decisions or hold quasi-judicial hearings. Exceptions to Sections 5-3 (Access and Connectivity), 5-4 (Subdivision of Land), and 5-5 (Parking and Loading) would be decided by DRB as a waiver, not as a variance, which is limited to exceptional lots per State statute. See related item for edits to Subsection 6-6(N). See related items for exceptions: Front yard parking and carports.
347	6-4(M)(1)	Remove DRB from list of decision-makers that have public hearings.	DRB is a staff board for technical reviews and does not make discretionary decisions or hold quasi-judicial hearings. See related item for proposed changes to Table 6-1-1.
349	6-4(M)(5)(e)	Remove reference to DRB in this list of decision-making bodies that hold public hearings.	DRB is a staff board for technical reviews and does not make discretionary decisions or hold quasi-judicial hearings. See related item for proposed changes to Table 6-1-1.

Exhibit A to R-19-150

Page	Section	Proposed Change	Explanation
350	6-4(O)(1)	<p>Replace text as follows:</p> <p>"For all other IDO standards, requests for exceptions beyond these thresholds will be reviewed and decided as Variances pursuant to the following:</p> <p>6-4(O)(1)(b) Subsection 14-16-6-6(M) (Variance – EPC) for exceptions to all other IDO standards associated with a Site Plan – EPC or requiring a Variance - EPC.</p> <p>6-4(O)(1)(c) Subsection 14-16-6-6(N) (Variance – ZHE) for exceptions to all other IDO standards associated with a Site Plan – Administrative or Site Plan – DRB."</p>	Editorial change to track with proposed change to DRB - Variance.
351	6-4(O)(1) [new]	<p>Add a new subsection as follows:</p> <p>"For standards in the following subsections, requests for deviations beyond these thresholds or to standards not included in Table 6-4-2 will be reviewed and decided as Waivers pursuant to the following:</p> <p>6-4(O)(1)(a) Subsection 14-16-6-6(new) (Waiver – DRB) for deviations from standards in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-5 (Parking and Loading) except for the following standards:</p> <ol style="list-style-type: none"> Standards in Subsection 5-5(F)(2)(a)2, which require a Permit - Carport in Front or Side Setbacks pursuant to Subsection 6-6[new]. Standards related to front yard parking in Subsection 5-5(F)(2)(a), Subsection 5-5(F)(1)(a)6, and Table 5-5-6 , which require a Variance - ZHE pursuant to Subsection 14-16-6-6(N). <p>6-4(O)(1)(b) Subsection 14-16-6-6(O) (Wireless Telecommunications Facility Waiver) for deviations from standards applicable to the erection or installation of a Wireless Telecommunications Facility (WTF) under this IDO."</p>	Adjusts the language for the proposed change that exceptions to Sections 5-3 (Access and Connectivity), 5-4 (Subdivision of Land), and 5-5 (Parking and Loading) would be decided by DRB as a waiver, similar to the way deviations to WTF standards are reviewed and decided by EPC instead of ZHE. Explains that carports in front/side setbacks need a Permit decided by ZHE. Adds reference to WTF Waivers. See related items for changes to carports and front yard parking.
356	Table 6-4-3	Change Variance - DRB to Waiver - DRB and realphabetize accordingly.	Editorial change to track with proposed change to DRB - Variance.
362	Table 6-4-4	Replace "Variance" with "Waiver" and realphabetize accordingly.	Editorial change based on edits to DRB - Variance.

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Page	Section	Proposed Change	Explanation
365	6-4(X)(1)a	<p>Revise as follows and renumber subsequent subsections accordingly: "...If the applicant is requesting an amendment that would require a <u>Waiver or Variance</u> from any of these standards, a separate <u>request must be submitted</u> Variance must be requested per the relevant procedure, as follows: 1. Section 14-16-6-6(new) (Variance Waiver – DRB) for exceptions to any standards in Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-5 (Parking and Loading) <u>except the following:</u> <u>a. Standards in Subsection 5-5(F)(2)(a)2, which require a Permit - Carport in Front or Side Setback pursuant to Subsection 6-6[new].</u> <u>b. Standards related to front yard parking in Subsection 5-5(F)(2)(a), Subsection 5-5(F)(1)(a)6, and Table 5-5-6, which require a Variance - ZHE pursuant to Subsection 14-16-6-6(N).</u> 2. Section 14-16-6-6(O) (<u>Waiver - Wireless Telecommunications Facility (WTF) for deviations from standards applicable to the erection or installation of a</u> under this IDO.</p>	Editorial change to track with proposed change to DRB - Variance.
380	6-5(G)(2)(e)	Replace "Variance" with "Waiver" and update cross reference to specific procedure and remove reference to the DPM.	
396	6-6(G)(2)(e)	<p>Replace text as follows: "The DRB may grant a Waiver pursuant to Subsection 6-6(new) as part of this approval." And remove reference to the DPM.</p>	Editorial change to track with proposed changes to DRB - Variance.
399	6-6(I)(2)(b)	Delete this section in its entirety as it relates to the DPM.	Editorial change to track with proposed changes to DRB - Variance.
401	6-6(J)(2)(a)2	Replace "Variance" with "Waiver" and update cross reference to specific procedure and remove reference to the DPM.	Editorial change to track with proposed changes to DRB - Variance.
402	6-6(J)(2)(c)2	Replace "Variance" with "Waiver" and update cross reference to specific procedure and remove reference to the DPM.	Editorial change to track with proposed changes to DRB - Variance.

Exhibit A to R-19-150

Page	Section	Proposed Change	Explanation
404	6-6(J)(3)(a)	<p>Revise as follows: "An application for a Preliminary Plat shall be approved if it meets all of the following criteria: 1. Is consistent with the ABC Comp Plan, as amended. 2. Complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property."</p>	<p>DRB is a staff board for technical reviews and cannot hold quasi-judicial hearings. Given the definition of public hearings, the DRB does not make decisions based on policy, since it is not a discretionary decision-making body. See related item for edits to Subsection 6-6(N) and Table 6-1-1.</p>
405	6-6(K)(2)(c)	<p>Replace "public hearing" with "public meeting."</p>	<p>Editorial change to track with proposed changes to Table 6-1-1.</p>
406	6-6(L)	<p>Change the name of Variance - DRB to Waiver - DRB throughout this subsection and the IDO and move and renumber this subsection accordingly. Replace "variance" with "deviation" or "waiver" as appropriate throughout this subsection. Replace "hearing" with "meeting" throughout this subsection. Delete subsection 6-6(L)(3)(a)(1), which is a hardship or exceptionality criterion only applicable to variances. Delete subsection 6-6(L)(3)(b) Sidewalk Variance, as this procedure is covered by the DPM. Move subsection 6-6(L)(3)(c) Front Yard Parking to subsection 6-6(N) so that ZHE reviews/decides. See Exhibit A-1 for mock-up of these changes.</p>	<p>DRB is a staff board for technical reviews and does not make discretionary decisions or hold quasi-judicial hearings. Deviations from standards in Sections 5-3 (Access and Connectivity), 5-4 (Subdivision of Land), and 5-5 (Parking and Loading) would be decided by DRB as a waiver, not as a variance, which is limited to exceptional lots (i.e. hardship criteria) per State statute. See related item for edits to Table 6-1-1 and Subsection 6-6(N). See related item for edits to Subsection 6-6(L)(3)(d).</p>
406	6-6(L)(3)(d)	<p>Move subsection 6-6(L)(2)(a)1 to the ZHE with the following sections Move subsection 6-6(L)(3)(d) Variance for a Carport in a Required Front or Side Setback to be a new decision in Table 6-1-1 with its own specific procedure so that ZHE reviews/decides. Change the name to "Permit - Carport in a Required Front or Side Setback." Notice = Mailed, Sign, Email, Web Replace reference to this procedure throughout the IDO accordingly.</p>	<p>All exceptions to standards in Section 5-5 are currently reviewed/decided by DRB as a Variance - DRB. This is proposed to change to be Waivers reviewed/decided by DRB at a public meeting. Carports have had additional review at public hearings prior to the IDO. This would return that review/decision to be closer to the pre-IDO process. See related change for Subsection 5-5(F)(2)(a)2.b.</p>
411	6-6(M)(3)(a)	<p>Revise so that VPO variances in Subsections b and c also have to meet general variance criteria.</p>	<p>State statutes define hardship/exceptionality criterion for variances. These VPO variances therefore need to meet that criterion in addition to specific criteria for each VPO.</p>

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Page	Section	Proposed Change	Explanation
412	6-6(N)(1)(a) 1	Delete this subsection and renumber subsequent subsection accordingly.	Editorial change to reflect edits proposed for DRB - Variance.
414	6-6(N)(3)(c)	Move this subsection to be a new decision in Table 6-1-1, still decided by ZHE. Revise name to "Permit - Wall or Fence - Major." Notice = Mailed, Sign, Email, Web Change name of "Wall or Fence Permit - Minor" to "Permit - Wall or Fence - Minor" for consistency. Replace references to these procedures throughout the IDO accordingly.	State statutes define hardship/exceptionality criterion for variances. Because these criteria are different, this must be a different type of decision, still decided by the ZHE following the same notice as is required for Expansions of a Nonconforming Use or Structure.
457	7-1	Deviation Replace text as follows: "An exception to <u>IDO</u> standards that can be granted by the relevant decision-making body within thresholds established by Table 6-4-2 or based on criteria for a waiver for standards related to wireless telecommunications facilities or standards in Section 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading) pursuant to Subsection 6-6(new) (Waiver - DRB). See also Waiver."	Broadens the definition to include deviations that are reviewed and decided as waivers (standards related to Wireless Telecommunication Facilities, Access & Connectivity, Subdivisions, and Parking).
499	7-1	Variance Revise as follows: "Exceptions to dimensional standards or variations from the strict, literal application of standards in this IDO or the DPM . Variances from zoning standards are reviewed and decided by the ZHE or EPC, while Variances from technical standards in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-5 (Parking and Loading), or any standard in the DPM or related to projects in public rights-of-way are decided by the DRB. The allowable use of premises may never be changed via a Variance."	Editorial change based on edits to DRB - Variance.
500	7-1	Waiver Add a new definition as follows: "A deviation beyond the thresholds established in Table 6-4-2 or from standards not included in Table 6-4-2. See also Deviation."	Waiver is a term used in the IDO for deviations from WTF standards beyond those allowed as an administrative deviation. The IDO does not define the term. This would add a definition that covers both Waiver - WTF as well as Waiver - DRB.

Exhibit A-1 to R-19-150

6-6(L) WAIVER – DRB

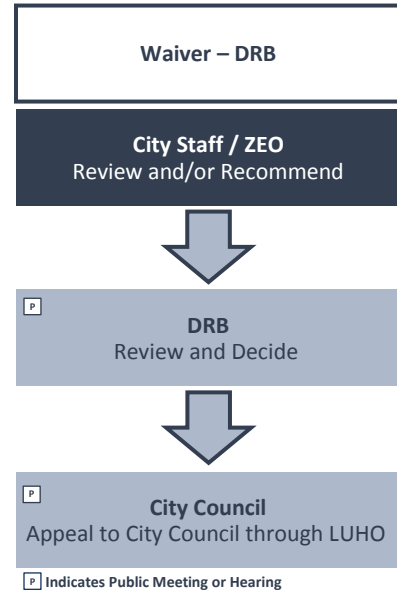
All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(L).

6-6(L)(1) Applicability

This Subsection 14-16-6-6(L) applies to application for a deviation from standards in Sections 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading) beyond the thresholds established by Table 6-4-2 in Subsection 14-16-6-4(O), except the following:

6-6(L)(1)(a) Standards in Subsection 5-5(F)(2)(a)2, which require a Permit - Carport in Front or Side Setbacks pursuant to Subsection 6-6[new].

6-6(L)(1)(b) Standards related to front yard parking in Subsection 5-5(F)(2)(a), Subsection 5-5(F)(1)(a)6, and Table 5-5-6, which require a Variance - ZHE pursuant to Subsection 14-16-6-6(N).



6-6(L)(2) Procedure

6-6(L)(2)(a) General

1. The City Planning Department staff shall review the application and forward a recommendation to the DRB pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
2. The DRB shall conduct a public meeting and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
3. A Waiver – DRB may not be granted until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).
4. A notice of any Variances, Waivers, or Deviations granted associated with a subdivision shall be placed on the final plat and on a separately recorded document, and any Variances, Waivers, or Deviations granted associated with a Site Plan shall be noted on the approved Site Plan.

6-6(L)(2)(b) Bulk Land Subdivision

Where a Waiver is requested based on a bulk land subdivision, all of the following procedures shall be followed in addition to the procedures in Subsection (a) above:

Exhibit A-1 to R-19-150

1. The use of the land for development and/or building purposes shall require review during the Subdivision or Site Plan approval process. Approval of a Waiver for a bulk land transfer does not indicate that land within that transfer complies with applicable Subdivision or Site Plan standards.
2. The plat shall reflect the applicant's agreement that building permits shall not be issued for any area where the Waivers apply before further subdivision and that recording of a final subdivision plat for the subject area has been completed.

6-6(L)(3) Review and Decision Criteria

An application for a Waiver – DRB shall be approved if it complies with the following criteria:

6-6(L)(3)(a) Any of the following applies:

1. There are pre-existing obstructions that cannot be easily or economically relocated or should not be altered, such as grades, fills, water courses, natural topographic features, man-made obstructions, or utility lines.
2. The area or site has been recognized as having historical, archeological, and/or architectural significance by the City, state, or federal government, and a Waiver is needed and appropriate to maintain such historical, archeological, and/or architectural significance.
3. The established neighborhood character or landscaping on the site would be damaged to a degree that outweighs the public interest in the City's normal technical standards in that location.
4. Varying from the normal requirements and standards will encourage flexibility, economy, effective use of open space, or ingenuity in design of a subdivision, in accordance with accepted principles of site planning.

Exhibit A-1 to R-19-150

- 6-6(L)(3)(b)** The Waiver will not be materially contrary to the public safety, health, or welfare.
- 6-6(L)(3)(c)** The Waiver does not cause significant material adverse impacts on surrounding properties.
- 6-6(L)(3)(d)** The Waiver will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.
- 6-6(L)(3)(e)** The Waiver will not conflict significantly with provisions of any city, county, or AMAFCA adopted plan, this IDO, or any other City code or ordinance.
- 6-6(L)(3)(f)** The Waiver will not allow, encourage, or make possible undesired development in the 100-year Floodplain.
- 6-6(L)(3)(g)** The Waiver will not materially undermine the intent and purpose of this IDO or the applicable zone district.
- 6-6(L)(3)(h)** The Waiver does not allow a lot or type of development that does not meet the applicable size, area, and development standards applicable in the zone district where the lot is located, unless a Deviation to such standards is within the thresholds established by Subsection 14-16-6-4(O) (Deviations) and is granted by the DRB as part of this approval.
- 6-6(L)(3)(i)** The Waiver approved is the minimum necessary to provide redress without being inconsistent with the provisions of this Section.