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Mayor Timothy M. Keller

# CITY OF ALBUQUERQUE

Albuquerque, New Mexico

## Planning Department

### INTER-OFFICE MEMORANDUM

July 17, 2020

**TO:** Pat Davis, President, City Council

**FROM:** Brennon Williams, Planning Director BW

**Subject:** AC-20-8, AC- 20-6, AC-19-18, Project PR-2018-002811 SI-2019-00158 VA-2019-00288: Richard Chavez, appeals the decision of the Environmental Planning Commission (EPC) to deny an appeal of the Development Review Board's (DRB) decision to deny of a variance for sidewalk installation for all or a portion of Lots 7-10, Block 44, Perea Addition, zoned R-1A, located at the northeast corner of 15<sup>th</sup> St. NW and Granite Ave. NW, containing approximately 0.32 acre(s). (J-13)

### OVERVIEW

This request for a sidewalk variance was denied by the DRB on October 30, 2019. The DRB's decision to deny the request was based on analysis that the installation of sidewalk at this location would provide a 'public benefit' (DPM criteria) and the requirement for sidewalk installation should be followed. The EPC, acting as the appellant body for a DPM sidewalk variance, heard the appeal of the DRB decision on February 13, 2020, and voted to deny the appeal. The applicant appealed the EPC's decision and the appeal was heard by the LUHO on April 30, 2020. The LUHO remanded the case to the EPC to address: provision of findings; the authority of the DRB to require sidewalks for this type of request; to consider if the lack of sidewalk is a non-conforming site feature and, if it is, if a lot consolidation would expand the nonconformity.

The EPC heard the case on June 11, 2020. The EPC followed the remand instructions and voted to deny the appeal and affirmed the decision of the DRB to deny the sidewalk variance. The EPC's second hearing focused on addressing the remand issues and did not rehear the entire case. The EPC determined that: (1) the DRB does have authority to require a sidewalk for this request; (2) the subject site is non-compliant with regard to sidewalk installation and, therefore, the nonconformity issue is moot; and (3) the EPC provided substantive findings for its decision.

Section 14-16-6-4(U) outlines the applicable criteria for the appeal in determining whether the EPC made one of the following mistakes when rendering their decision:

1. The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

2. The decision being appealed is not supported by substantial evidence.
3. The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

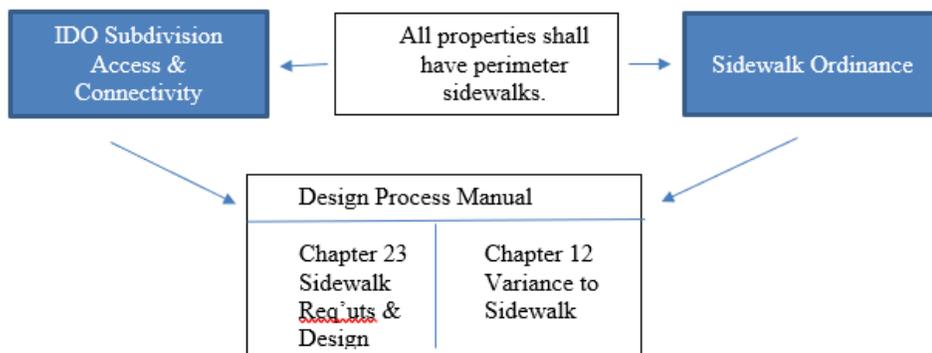
**APPEAL**

The appellant cites the following as reasons for the appeal (in bold text). Staff’s response to the appellant’s arguments follows in regular text. A full list of the appellant’s arguments is contained in the appeal application, dated June 26, 2020, which is included in the record.

- 1. Appellant: The DRB does not have authority to require the installation of sidewalks for this request and a third party, the LUHO, should review this decision.**

The question of DRB authority was part the LUHO remand instructions to the EPC. The LUHO asked the EPC to determine if the DRB has authority to require installation of sidewalk for this request to re-divide the property. The EPC affirmed that the DRB does have this authority and the decision is supported by the adopted findings.

Section 14-16-5-3(D)(1)(a) of the IDO (approved 2018) and the Sidewalk Ordinance, City Code of Ordinances, Section 6-5-5-3 (approved 1983), require a property owner to provide perimeter sidewalks for pedestrian circulation. Each Ordinance references the Design Process Manual for sidewalk design standards (Chapter 23) and lists criteria for review of a variance to sidewalk installation (Chapter 12). This application for a minor subdivision—the main request is to re-divide land in order to sell one house—triggers the requirement in the IDO to provide a perimeter sidewalk.



- a. The application for a Subdivision is subject to IDO Subdivision and Access and Connectivity Provisions.

The request to re-divide land at 906 15th Street NW triggers the requirements of Access and Connectivity (14-16-5-3) and, specifically, Pedestrian Circulation requirements for a perimeter sidewalk (14-16-5-3(D)(1)(a)). The applicant has four lots with lot lines running east and west. The lot lines cross the two houses on the property. The application meets the IDO definition of a subdivision for which the subdivision provisions of the IDO are applicable. The applicant wants to re-divide or replat so that there are two parcels

divided by a lot line oriented north and south. <sup>1</sup>

- (1) The application meets the IDO definitions of subdivide and subdivision triggering the requirements for a subdivision of land. The applicant is re-dividing land into two parts for future transfer of ownership.

(a) **“Subdivide**

To divide or re-divide land into 2 or more parts by whatever means to facilitate the present or future conveyance or other transfer of incidents of ownership or use.” (IDO, § 7-1, Definitions, p. 496)

The applicant had his realtor, Cathy Olson, speak on his behalf at the first DRB meeting of September 11, 2019. Ms. Olson stated:

“I am the realtor for Richard Chavez. ....He is requesting a, the request is to replat 4 lots into 2 lots and a sidewalk waiver for today’s request...would like to go ahead and split the property as there are now 2 residences on the corner. So, in order for him to live in one and sell the other this will be required to get that done...” (Record AC-19-18, pp. 134-5)

The applicant is re-dividing land for future conveyance or other incidents of ownership or use and, therefore, triggers the requirements of a subdivision of land, including sidewalks.

(b) **“Subdivision**

1. The process of subdividing land into 2 or more lots or parcels for purposes of sale or development.
2. The parcel of land subdivided.” (IDO, § 7-1, Definitions, p. 496)

- (2) When the application is for a subdivision of land that creates fewer than 10 lots, the IDO Section 14-16-6-6(I)(a)(1) identifies it as a ‘Subdivision of Land-Minor’.<sup>2</sup>

- (3) The IDO Section 14-16-6-6(I)(3) ‘Review and Decision Criteria’ for a Subdivision of Land-Minor require compliance with the IDO, DPM, and other adopted City regulations:

6-6(I)(3) **Review and Decision Criteria**

An application for a Subdivision of Land – Minor shall be approved if it meets all of the following criteria:

1. 6-6(I)(3)(a) 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.
- 6-6(I)(3)(b) Any Variances granted to development

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<sup>1</sup> The EPC Staff Report for the June 11, 2020 Remand hearing provides a timeline-with air photos—to trace development activity on the subject site and analyze if sidewalk and driveway features are non-conforming or non-compliant. The EPC found that the lack of sidewalk is a non-compliant site feature.

<sup>2</sup> IDO 14-16-6-6(I)(a) Subdivision of Land – Minor. Applicability. “Approval of a subdivision of land within the City that:  
1. Creates 10 or fewer lots on any single lot that has been recorded as a single lot for at least 3 years previously.”

standards applicable to the subdivision in Section 14-16-5-3 (Access and Connectivity) or Section 14-16-5-4 (Subdivision of Land) and any deviations to other IDO standards granted within the thresholds established by Section 14-16-6-4(O) (Deviations) are documented in the application.

The IDO Access and Connectivity requires a perimeter sidewalk per IDO 14-16-5-3(D)(1):

**Sidewalks in Residential Development**

(a) Perimeter sidewalks shall be provided in accordance with the DPM...

- b. The application for a Subdivision is also subject to the Sidewalk Ordinance which requires a perimeter sidewalk.

The ‘Review and Decision Criteria’ for a Subdivision states that the application is subject to ‘other adopted City regulations.’ The Sidewalk Ordinance, § 6-5-5-3 requires all properties to have a perimeter sidewalk:

**Pedestrian Sidewalk, Drive Pad, And Curb and Gutter required:**

All properties within the city shall have sidewalk, drive pad, curb ramps, curb and gutter in accordance with the standards set forth by §§6-5-5-1 et seq., unless a variance from these standards is allowed through the procedures established by §§6-5-5-1 et seq. or unless such sidewalks, curb ramps, drive pads, curbs and gutters were constructed under standards previously in force. Such previously constructed improvements shall be considered non-conforming and as such may be repaired and maintained, however, if and when replacement becomes necessary, it shall be replaced according to the current standards or variance procedures of §§6-5-5-1 et seq. Compliance with the provisions of §§6-5-5-1 et seq. shall be the responsibility of the property owner. The cost of installing sidewalk shall be borne by the abutting property. On property in residential zones where only houses and townhouses are allowed, and where the lot abuts public streets at both its front and the rear lot lines, the property does not bear the cost of constructing missing sidewalk abutting the rear lot line where the property does not have the legal right to vehicular access from that street; this exception applies only to lots platted before June 29, 1983 (the effective date of the city's Subdivision Ordinance, set forth in § 14-16-5-4). ('74 Code, §8-6-3) (Ord. 219- 1972; Am. Ord. 39-1981; Am. Ord. 77-1989; Am. Ord. 2017-025)

- c. The application for a Subdivision is subject to the Development Process Manual (DPM) which requires a perimeter sidewalk on a local street.

The DPM cross references the Sidewalk Ordinance in requiring a perimeter sidewalk in Chapter 23, Section 5:

**Section 5. MISCELLANEOUS STREET DESIGN CRITERIA**

**A. Sidewalks**

Refer to Tables 23.2.1.A and 23.2.1.B for detailed information about sidewalk widths and locations. Sidewalks must be provided for all properties within the City of Albuquerque as required by the Sidewalk Ordinance. The

fundamental requirements governing sidewalk design are established by this ordinance. Sidewalk designs must provide for the mobility, safety and comfort of the pedestrian and provide for adequate pedestrian access to abutting property. Pertinent sidewalk design criteria are collected herein for the convenience of the designer.

**2. Appellant: The fact that the City failed to address issues in 2004, does not constitute a deficiency in the current application.**

The EPC nor the staff have asserted that there is a deficiency in the application, rather the new application for a plat does need to be reconciled with any non-compliant for nonconforming features. In response to the LUHO remand instructions, staff analyzed the site history. In 2004, the applicant requested a building permit and the entire property should have been brought up to date with current standards, including the Sidewalk Ordinance. It is unclear why required items were not addressed. The lack of sidewalk on the property transformed into a non-compliant site feature at that time. The EPC concurred with this analysis. The applicant did not make a contrary assertion in the hearing. Since the property's lack of a sidewalk is a non-compliant site feature, the nonconforming provisions of the IDO do not apply to the property.<sup>3</sup>

In addition to this non-compliance issue, the current request to replat the property to allow for the sale of one of the structures also fully triggers the requirement for all IDO, DPM, and other City regulations (Sidewalk Ordinance) to be apply to the property. (See previous discussion.) Therefore, the DRB had the authority to require the sidewalks in conjunction with this replat request. The applicant acknowledged that authority by submitting a separate application for a sidewalk variance. That variance was analyzed in the context of the property and the surrounding neighborhood. The request did not meet the criteria required to allow no sidewalk installation, therefore the DRB denied the variance.

**3. Appellant: The applicant does not meet the definition of development because he chooses to sell his property.**

Mr. Chavez's realtor testified in the September 2019 DRB meeting that the purpose of the plat application was to facilitate conveyance of property to another owner. The property cannot be sold with the current plat where homes are straddling lot lines. The application meets the definition of 'subdivide': re-divide land for future conveyance or other incidents of ownership or use. The IDO requires a minor subdivision of land to comply with all City regulations, including the installation of sidewalk. (See full explanation in Item 1.a above.)

The applicant's request was treated the same way all applications for replat, re-divide, and lot consolidation are treated. These applications are required to provide sidewalk according the current City regulations. All requests for variances to the sidewalk are analyzed using the criteria used to analyze this current variance application.

The following items are not part of the remand instructions, and are thus items that were decided previously by the DRB and EPC. Therefore, only a brief response is offered here.

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<sup>3</sup> See June 11, 2020 Staff report, pp. 7-10 for complete analysis of the lack of sidewalk being a non-compliant rather than a non-conforming site feature.

These items are fully addressed in other staff reports in the record.

**4. Appellant: The criteria used in the original approval discusses that the requirements in the DPM and the IDO are substantially similar. The applicant asks that this be defined.**

The basis for the decision to deny a Sidewalk Variance is the criteria in the DPM, Chapter 12, supplemented by the IDO. The DRB Traffic Engineer testified to the EPC in the February hearing that she used both sets of criteria to evaluate the request. Page 33A of the record for AC-20-6 lists the criteria from both the DPM and the IDO and demonstrates how they are similar. The DRB determined that the installation of sidewalk at this location would provide a ‘public benefit’ and, therefore, no variance should be granted.

**5. Appellant: A significant amount of the streets around the neighborhood do not have sidewalks.**

The exhibit on page 18 of the June 11, 2020 EPC<sup>4</sup> staff report maps sidewalks in the area. The DRB Traffic Engineer determined that sidewalks are in use in this pedestrian neighborhood and there is a public benefit to eliminating gaps in the sidewalk system in this neighborhood.

## CONCLUSION

The LUHO asked the EPC to address three main issues:

1. Provide substantive findings for the EPC decision;
2. Determine whether or not the DRB can require the applicant to construct the sidewalks; and
3. Determine if the existing lack of sidewalks is a non-conforming site feature subject to the non-conformance section of the IDO, and if it is, would a lot consolidation expand the nonconformity.

The EPC adopted substantive findings to support their decision. These are included in the record and contain references to the applicable ordinances and codes. They provide a sound justification for the decision.

The record contains evidence citing the IDO Section 14-16-5-3(D)(1)(a) (approved 2018) and the Sidewalk Ordinance, City Code of Ordinances, § 6-5-5-3 (approved 1983) as verification that the DRB can require sidewalks.

The staff report to the EPC contains a complete discussion regarding the issue of non-conformity. The EPC concluded that because the sidewalk would have been required at the time of building permit in 2004 by the Sidewalk Ordinance, the lack of sidewalk is non-compliant rather than non-conforming.

The decision of the EPC was supported by substantial evidence in the record, which included a complete review of the remand issues from the Land Use Hearing Officer. The EPC did not act fraudulently, arbitrarily, or capriciously. The EPC acted within its authority in denying the appeal and reaffirming the DRB denial of a sidewalk variance.

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<sup>4</sup> Also see Record for AC 20-6, page 35-A.



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Jolene Wolfley, Chair  
Development Review Board  
Planning Department

MG:JW



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	Decisions Requiring a Public Meeting or Hearing	Policy Decisions
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Site Plan -- EPC including any Variances -- EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Historic Certificate of Appropriateness -- Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness -- Major (Form L)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Annexation of Land (Form Z)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<input type="checkbox"/> Amendment to Zoning Map -- EPC (Form Z)
	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)	<input type="checkbox"/> Amendment to Zoning Map -- Council (Form Z)
		<b>Appeals</b>
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

**APPLICATION INFORMATION**

Applicant: Richard G. Chavez		505-934-5979
Address: 906 15 <sup>th</sup> St NW		Email: rceagle2sky@gmail.com
City: Albuquerque	State: NM	Zip: 87104
Professional/Agent (if any):		Phone:
Address:		Email:
City:	State:	Zip:
Proprietary Interest in Site:	List all owners:	

**BRIEF DESCRIPTION OF REQUEST**

Appeal of EPC June 11th Notice of Decision

**SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)**

Lot or Tract No.: Lots 7-10 located at NEC of 15 <sup>th</sup> St NW	Block: Block 44 Perea Additon	Unit:
Subdivision/Addition:	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): J-3	Existing Zoning: R-1A	Proposed Zoning:
# of Existing Lots: 4	# of Proposed Lots: 2	Total Area of Site (acres): 0.32

**LOCATION OF PROPERTY BY STREETS**

Site Address/Street: Between: and:

**CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)**

Signature: <i>Richard Chavez</i>	Date: 6-26/2020
Printed Name: RICHARD G. CHAVEZ	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

**FOR OFFICIAL USE ONLY**

Case Numbers	Action	Fees	Case Numbers	Action	Fees

Meeting/Hearing Date: Fee Total:

Staff Signature: *008* Project #

**FORM A: Appeals**

*Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.*

- APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)

**X APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)**

Interpreter Needed for Hearing?  if yes, indicate language: \_\_\_\_\_

A Single PDF file of the complete application including all documents being submitted must be emailed to [PLNDRS@cabq.gov](mailto:PLNDRS@cabq.gov) prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF *shall be organized* with the Development Review Application and this Form A at the front followed by the remaining documents *in the order provided on this form*.

Project number of the case being appealed, if applicable:       #2019-002811      

Application number of the case being appealed, if applicable: \_\_\_\_\_

Type of decision being appealed:       EPC Notice of Decision      

Letter of authorization from the appellant if appeal is submitted by an agent

Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)

Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4)

Copy of the Official Notice of Decision regarding the matter being appealed

*I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.*

Signature: <i>Richard G. Chavez</i>	Date: 6-26-2020
Printed Name: <u>      Richard G. Chavez      </u>	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

FOR OFFICIAL USE ONLY	
Case Numbers:	Project Number:
Staff Signature:	
Date:	

Notice of Formal Protest of EPC's Recommendation

for AC-20-6 Project # 2019-002811

By: Richard G. Chavez

90615<sup>th</sup> ST NW

I am Protesting the EPC's Recommendation based on 6-4-(U) (4)a The Decision making body or the prior appeal body acted Fraudulently, Arbitrarily and Capriciously.

For the record, I was never given any instructions or guidance on how and where to file this appeal other than a reference to the Ordinance section that addressed appeals in the Notice of Decision. I had to find out where and to whom I submitted my Appeal. I was also told that I will be told how much I have to pay for the appeal and would be told how much at the Development Service Desk, but that's impossible to do because no one is manning the desk. It wasn't until the day before my appeal was due that I contacted Planning staff on the 25<sup>th</sup> I had to reach out to Planning Department staff person, Mr. Alfredo Salas to ask him where I submit my appeal to and he responded that I had to contact two individuals in Municipal Development, Being unable to locate these individuals because the city phone system is not giving you any contact information, Mr. Salas forwarded my name to them so they could forward an application for my Appeal on the last day I had to file an appeal. If I didn't know better I would be led to believe that the Planning Staff has intentionally or unintentionally left me uninformed as to how and where I file my appeal. You would think that would be part of the notification in the Notice of Decision by EPC. So I have to wonder, is this a Passive Aggressive approach that staff has decided in how they want to deal with me, in order to short circuit my appeal? The fact that this question is being asked is a serious symptom of poor management of the Planning Department. What compounds this problem is the lack of accountability of the Planning Staff. They are not held accountable for their false statements and arbitrary decision and actions that they have taken. The Hearing Officer is not going to address the false statements and having to Remand back to EPC was the only means to address the sloppy work of staff .Question is sloppy Is consider maleficence?

1. For the record on two occasion, Planning Staff stated that I had submitted my application in July 2019. That is a false statement and the reason Planning staff repeats this false statement, is because it goes to the level of incompetence in reviewing my application and not addressing the changes in the Ordinance that the City Council enacted in May of 2019.
2. Planning Staff on multiple Occasion insist that I requested a Variance for my Project that is another false statement. I came in requesting a Lot Line Adjustment, staff stated that this would be a subdivision and the only option I had was Sidewalk Variance or a Sidewalk Waiver, staff explained there was a difference in the outcomes and that there were separate filing fees for A Sidewalk Variance and Sidewalk Waiver. I asked for a Waiver and paid the fee as required for a waiver that had already been addressed by City Council, but not by Planning Staff. Planning Staff

instructed/directed me to check off both boxes in the application because to apply for a Sidewalk Waiver I MUST check off the Variance Box, this was the instructions by staff to me. Nowhere in my application will you see me applying for a Sidewalk Variance, but city planning insist that I did, which is a false statement that has gone on without any accountability to these false statement.

3. For the record, if I were to request a Sidewalk Variance it would be for the sidewalk On 15<sup>th</sup> which would lead into the base of my neighbors Elm tree at 4ft wide and at 3ft wide, it would run into the root base of the tree, creating a legal liability for me as constant Tripping Hazard that has now been created on the north end of the sidewalk on 15<sup>th</sup> St. if, I were to request a Sidewalk Variance. For the Record, because both staff and EPC have falsely claimed that you can create a transition off the sidewalk to the dirt surface where no sidewalk exist, that is a false statement. **Licensed sidewalk contractors have clearly stated to me, there is no such thing as a Transition off a sidewalk on to dirt**, so what you have is a 2-3 inch deviation in the sidewalk to the dirt which by HUD and OSHA standards creates a TRIPPING HAZARD, Three false statement from Planning Staff and no one is being held accountable. These false statement regarding a "Transition" off the sidewalk are an attempt to MINIMIZE and DIMINISH the legal liability that this sidewalk will create for me by installing a **known and quantifiable Tripping Hazard**.
4. I do not agree with the interpretation by Planning Staff that the Ordinance gives the DRB the authority to require sidewalk installed when there is no development activity involved as defined the City's IDO and I would ask for an impartial third party (LUHO) to review this decision. The DRB is limited to Development related activity and to arbitrarily designate a requirement for sidewalk without specific language from the IDO's Development criteria seems questionable.
5. #7 of the OFFICIAL NOTICE OF DECISION states that the DPM and IDO prior to May 2019 or Councils adoption were "Substantially Similar" how do you define Substantially Similar since staff is using that to ignore the fact that Staff failed to adopt those changes in a timely fashion prior to the submission of my application on August 29, 2019.
6. #10 in the OFFICIAL NOTICE OF DECISION states the IDO defines Development and suggest because I may choose to sell my property that somehow I meet the definition of a Development, which is absurd and false and if the Planning staff calls a fence between the properties a Structure, it could also be argued, it's a Barrier. At best when does single dwelling unit constructed with all proper permits from the city, become a Development 16 years later?
7. #11 in the OFFICIAL NOTICE OF DECISION states that I should have re-platted my property when I submitted my request for construction permit in 2004. The fact that the city failed to address this issues back then does not constitute a deficiency in the current application. Foundation and Principals of Administrative law says you can't look back at lack of compliance on the city's part and update application referring back to city's lack of action, that action has passed and there is no relevance to current request.

8. #12 states the application was analyzed using the same review criteria as other similar request to forego installation of sidewalk. If that is the case do all of the applicants have to have their application Remanded back to the approving body because of sloppy work and does the Planning Staff make it a policy not to notify the appellant as to the who, what and where to appeal a decision from the EPC? Is there established protocol for notifying Appellants and was it followed in my case?
  
9. #13 in the OFFICIAL NOTICE OF DECISION states, the subject site does not meet Sidewalk Variance criteria under DPM Chapter 12. How could this determination be made when I've never asked for a Sidewalk Variance? I would have no problem meeting 4 of the 9 criteria of the Sidewalk Ordinance variance stated in the Chapter 12 Introduction to Sidewalk Variance. This is another example of the Arbitrary Nature the Planning Staff has taken with my application. Never submitted a request for Variance, but it has been determined that I don't meet any of their criteria. The Planning staffs rational for not implementing the Amendment to the Sidewalk Ordinance is, that it met similar criteria, without defining similar and without providing any notification of the change to the Sidewalk Ordinance as it related to my application.
  
10. #14 in the OFFICIAL NOTICE OF DECISION states the majority of area has sidewalk, what it fails to state that a significant amount of the streets around my neighborhood do not have sidewalk and I don't see any plans for any new subdivision taking place in my neighborhood, as it is an older neighborhood and significant built out, so what is the relevance of this statement? What I find ironic is that the city is forcing me to pay for sidewalk that everyone and their brother gets to use for FREE. What about the legal fees that I will be stuck with when someone at night plants their face on my sidewalk with poor street lighting and a made for Tripping Hazard. See # 3 point of discussion. Attached is a picture of a 2 story duplex going on the corner of 14<sup>th</sup> and Mountain Rd. You can clearly see there is no sidewalk on the west side of the street. Both the developer and owner of the lot with gas lines (Gas Co. of NM, I presume) on it, have not been required to install sidewalk. This goes to show the inconsistency and arbitrary nature the Planning staff uses in enforcing the Sidewalk Ordinance. I would presume that the City Engineer would have sent them an official letter demanding the developer or Gas Co. of New Mexico to install sidewalk where it actually ensures a completed sidewalk from Granite to Mountain Rd. Unlike my property where there is no other sidewalk to tie into to complete a system that would be safe for a person using a wheel chair or walker. The Planning Director specifically stated on a TV interview that through the permitting process sidewalk installation will be addressed. So what happen to a real development that is actual putting up structures and installing utility infrastructure
  
11. #15 in the OFFICIAL NOTICE OF DECISION states application was analyzed using same Review Criteria as another similar request. If that is the case, why was the city councils adoption amendments to the Sidewalk Ordinance not used for my application and why was I NEVER NOTIFIED that changes had taken place with the Ordinance that I was supposed to complying with? If staff was not arbitrary in its decisions, why did the Land Use Hearing Officer have to

instruct the City Planning Director, Planning Staff, the DRB and EPC a Remand to EPC on how to do their job, if my request was analyzed as everyone else's was. Why have the false statement about the time line for my application being received in July not September continue to persist in its false nature and why does the fact that I did not apply for a Sidewalk Variance as a false statement by the Planning Staff not being addressed?

12. #16 in the OFFICIAL NOTICE OF DECISION states Requirement for property owners to provide and maintain sidewalks in public right away as required by 6-5-5-3- and goes on to state that the DRB has the Authority to require Public Infrastructure that comes before the DRB for any development action. I don't see language that clearly states that a Non-related development activity that does not meet any of the IDO's Development Criteria is required to meet a new subdivision standard for new sidewalks. Planning staff claims that because I'm asking for a Lot Line Readjustment, that constitutes a Development activity even though what I'm doing does not meet the IDO definition for Development.

I realize that the false statement are not related to the cited sections of the Sidewalk Ordinance, but it speaks to the lack of accountability of the Planning Department and Staff, in their incompetence of administering the process for my application. This process has been defined by staff's arbitrary decision and statements. The arbitrary nature of the Planning staff was proven by the Land Use Hearing Officer having to Remand back to EPC my application in which he admonished the staff, DRB, EPC and Planning Director for doing a sloppy job.

There is a better solution to this Whack-A Mo ordinance that you call a Sidewalk Ordinance. You have a 400 million gap in sidewalks, does anyone honestly believe that by shoving down the throats of Property Tax Paying Constituents like I, Not Developers, who the Planning Staff seems to treat everyone as a developer, who happen to request a permit from the city, is going to fill that 400 million gap? This is where the Planning Department needs to act like a Planning Department and work with the appropriate CIP program to carve out a slice of funding that can be secured over 10-20 years of bond funding to pay for sidewalk installation. If the city can designate a 1% for the ARTS, why can't the city designate an amount from CIP specifically for sidewalk? I would believe there are more people utilizing the sidewalk than there are traveling around the city to view Art projects. The first funding could target the older areas of Albuquerque, like Barreлас, East San Jose, San Jose, Martinez Town, and Old Town area first. To treat every applicant as a Developer who's actually paying property taxes. Why would you want to treat and put Property Tax through what I have gone through and be treated as nothing more than a REVENUE SOURCE for the city coffers? As a department of the city why would you want to experience the embarrassment of being called out for not doing your job the Land Use Hearing Officer?

#### **Bureaucratic Calcification Syndrome**

- This is how we've always done this
- No flexibility to address non-conforming issues
- Denial and more Denial of Bad Decision and Sloppy Work
- No Accountability for bad action or false statements

I realize these point are irrelevant to staff and this process, but at some point in this process someone need to hold this Planning Department accountable for its sloppy handling of my application. How many similar applicants were treated this way and did not have the ability to articulate their case or couldn't afford the appeal process. I understand the cities need to have sidewalk in our streets, but to force constituents who are already paying property taxes, in my case \$6,800.00 to be taxed again for installing sidewalk? The city does install sidewalk at specific locations that it deems worthy, so why couldn't all sidewalk be addressed over a 20 year period. Sidewalks could be on every street in the city in that time frame which will happen a lot sooner than utilizing the Whack-A-Mo Ordinance you call a Sidewalk Ordinance.

**PLANNING DEPARTMENT**  
**URBAN DESIGN & DEVELOPMENT DIVISION**  
600 2nd Street NW, 3rd Floor, 87102  
P.O. Box 1293, Albuquerque, NM 87103  
Office (505) 924-3860 Fax (505) 924-3339



## **OFFICIAL NOTIFICATION OF DECISION**

June 11, 2020

Richard Chavez  
906 15th Street NW  
Albuquerque NM, 87104

**AC-20-6 Project #2019-002811**  
**VA-2019-00288 - VARIANCE**  
AC-19-18 Appeal of Denial of DPM Variance by the  
Development Review Board

Richard Chavez appeals the DRB's denial of a request for a DPM sidewalk variance for all or a portion of Lots 7-10 Block 44 Perea Addition zoned R-1A, located at NEC of 15<sup>th</sup> ST NW and Granite Ave NW, containing approximately 0.32 acre(s). (J-13)  
Staff Planner: Maggie Gould

On June 11, 2020 the Environmental Planning Commission (EPC) voted to deny this Appeal.

### Findings:

1. This is a remand from the Land Use Hearing Officer to the Environmental Planning Commission.
2. The LUHO tasks the EPC with three main issues to address: the lack of substantive findings; whether or not the DRB can require the applicant to construct the sidewalks; and if the existing lack of sidewalks is a non-conforming site feature subject to the non-conformance section of the IDO. These issues are addressed as demonstrated by the following findings.
3. These findings are substantive and provide clear basis for the EPC decision pursuant to IDO §6-4(U)(3)(c)4.
4. The Applicant's request for a variance to the sidewalk standards accompany an application for a Subdivision – Minor for a an approximately 0.32-acre site at 15<sup>th</sup> and Granite NW.
5. IDO §6-6(I)(a) Review and Decision Criteria states that a Subdivision – Minor shall be approved if it meets “[a]ll 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.” IDO §6-6(I)(a)(3). The Sidewalk Ordinance 6-5-5-3 is an adopted City regulation.
6. The DRB also has the authority to require sidewalks in association with any action on a property that comes before the DRB per the Sidewalk Ordinance, §6-5-5-3, which states that all properties within the city shall have sidewalk, drive pad, curb ramps and curb and gutter unless a variance from these standards is obtained. DRB denied the variance request to the sidewalk standards, thereby requiring a sidewalk.

OFFICIAL NOTICE OF DECISION

AC-20-6 Project #2019-002811

June 11, 2020

Page 2 of 3

7. The Development Process Manual (DPM) references the Sidewalk Ordinance and sets out the variance procedure for installation of a sidewalk. The review criteria regarding allowing no sidewalk installation in the DPM and contained in IDO (pre May 2019) are substantially similar. The Transportation Engineer stated that both sets of criteria were used to determine that the request did not meet the variance/waiver criteria. *See* AC-19-18, p. 9.
8. The R-1A zone allows one house per lot. The current platting of the site has two houses on portions of four lots. The second house on the property was built in 2004; the underlying zoning at the time a, SU-2 TH did not limit houses to one per lot.
9. The IDO Section 14-16-1-4 (A), Applicability, states that the IDO applies to all private land in the City and all owners and occupants are required to comply with standards. Additionally, all development after the IDO effective date, May 18, 2018, is subject to IDO standards.
10. The IDO defines “development” as “[a]ny activity that alters the ground on a property. Development may include construction of buildings, structures, or streets; installation of landscaping, infrastructure, utilities, or site features; and/ or activities to prepare land for such construction or installation, such as grading. For the purposes of this IDO, this term included new development and redevelopment.” The applicant states on the record that it is his intent to subdivide the property to sell off a dwelling unit on one of the proposed lots. *See* AC-19-18, p. 134-5. The applicant also has a fence in the public right-of-way which must be removed or he will have to obtain a revocable permit from the city.
11. With the new development and construction in 2004, the owner should have re-platted the lots to create new lots that did not split the buildings and should have provided a sidewalk. In 2004, the lack of sidewalk transformed from being a *nonconforming* site feature to become a *non-compliant* site feature.
12. The application was analyzed using the same review criteria as other similar requests to forego installation of a sidewalk.
13. The subject site does not meet the criteria for a Sidewalk Variance under DPM Chapter 12. The subject site is in an active pedestrian area with a medium intensity land use. The provision of a sidewalk in this area will ‘contribute to the public welfare.’
14. The majority of the area has sidewalks. *See* AC-19-18, p. 10, 11.
15. The DRB did not act arbitrarily or capriciously and acted within the authority granted by the IDO, the DPM, and the Sidewalk Ordinance.
16. The requirement for property owners to provide and maintain sidewalks in the public right of way abutting their property per the Sidewalk Ordinance, § 6-5-5-3, is applicable to the subject site and any property that comes before the DRB for any development action. The DRB has the authority to require this public infrastructure per the Review and Decision Criteria for Subdivision – Minor (IDO Section 6-6(I)(a)).

OFFICIAL NOTICE OF DECISION

AC-20-6 Project #2019-002811

June 11, 2020

Page 3 of 3

**APPEAL:** If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **June 26, 2020**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15<sup>th</sup> day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

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Sincerely,

for Brennon Williams  
Planning Director

cc: Crystal Ortega, Ciy Council, City hall 9<sup>th</sup> floor  
Kevin Morrow, Legal Department, City Hall 4<sup>th</sup> floor.  
Richard Chavez, 906 15th Street NW, Albuquerque NM, 87104  
EPC file  
DRB file





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## **OFFICIAL NOTIFICATION OF DECISION**

June 11, 2020

Richard Chavez  
906 15th Street NW  
Albuquerque NM, 87104

**AC-20-6 Project #2019-002811**  
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AC-19-18 Appeal of Denial of DPM Variance by the  
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Staff Planner: Maggie Gould

On June 11, 2020 the Environmental Planning Commission (EPC) voted to deny this Appeal.

### Findings:

1. This is a remand from the Land Use Hearing Officer to the Environmental Planning Commission.
2. The LUHO tasks the EPC with three main issues to address: the lack of substantive findings; whether or not the DRB can require the applicant to construct the sidewalks; and if the existing lack of sidewalks is a non-conforming site feature subject to the non-conformance section of the IDO. These issues are addressed as demonstrated by the following findings.
3. These findings are substantive and provide clear basis for the EPC decision pursuant to IDO §6-4(U)(3)(c)4.
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OFFICIAL NOTICE OF DECISION

AC-20-6 Project #2019-002811

June 11, 2020

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12. The application was analyzed using the same review criteria as other similar requests to forego installation of a sidewalk.
13. The subject site does not meet the criteria for a Sidewalk Variance under DPM Chapter 12. The subject site is in an active pedestrian area with a medium intensity land use. The provision of a sidewalk in this area will ‘contribute to the public welfare.’
14. The majority of the area has sidewalks. *See* AC-19-18, p. 10, 11.
15. The DRB did not act arbitrarily or capriciously and acted within the authority granted by the IDO, the DPM, and the Sidewalk Ordinance.
16. The requirement for property owners to provide and maintain sidewalks in the public right of way abutting their property per the Sidewalk Ordinance, § 6-5-5-3, is applicable to the subject site and any property that comes before the DRB for any development action. The DRB has the authority to require this public infrastructure per the Review and Decision Criteria for Subdivision – Minor (IDO Section 6-6(I)(a)).

OFFICIAL NOTICE OF DECISION

AC-20-6 Project #2019-002811

June 11, 2020

Page 3 of 3

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Sincerely,

for Brennon Williams  
Planning Director

cc: Crystal Ortega, Ciy Council, City hall 9<sup>th</sup> floor  
Kevin Morrow, Legal Department, City Hall 4<sup>th</sup> floor.  
Richard Chavez, 906 15th Street NW, Albuquerque NM, 87104  
EPC file  
DRB file



## ***Environmental Planning Commission***

***Agenda Number: 1  
Project #: AC-20-6,  
PR-2019-002811, VA-2019-00288,  
AC-19-18  
Hearing Date: June 11, 2020***

### ***Staff Report***

<b><i>Agent</i></b>	Richard Chavez
<b><i>Applicant</i></b>	Richard Chavez
<b><i>Request</i></b>	Remand from the LUHO to the EPC
<b><i>Legal Description</i></b>	Lots 7-10 Block 44 Perea Addition,
<b><i>Location</i></b>	NEC of 15 <sup>th</sup> St. NW and Granite Ave. NW,
<b><i>Size</i></b>	.32 acres
<b><i>Existing Zoning</i></b>	R-1A,
<b><i>Proposed Zoning</i></b>	R-1A,

### ***Staff Recommendation***

Affirm EPC DENIAL of the appeal, thereby affirming the DRB denial of a sidewalk variance.  
Project # 2018-002811, VA 2019-00288  
AC-20-6, AC-19-18  
based on the Findings beginning on p. 14.

### ***Staff Planner***

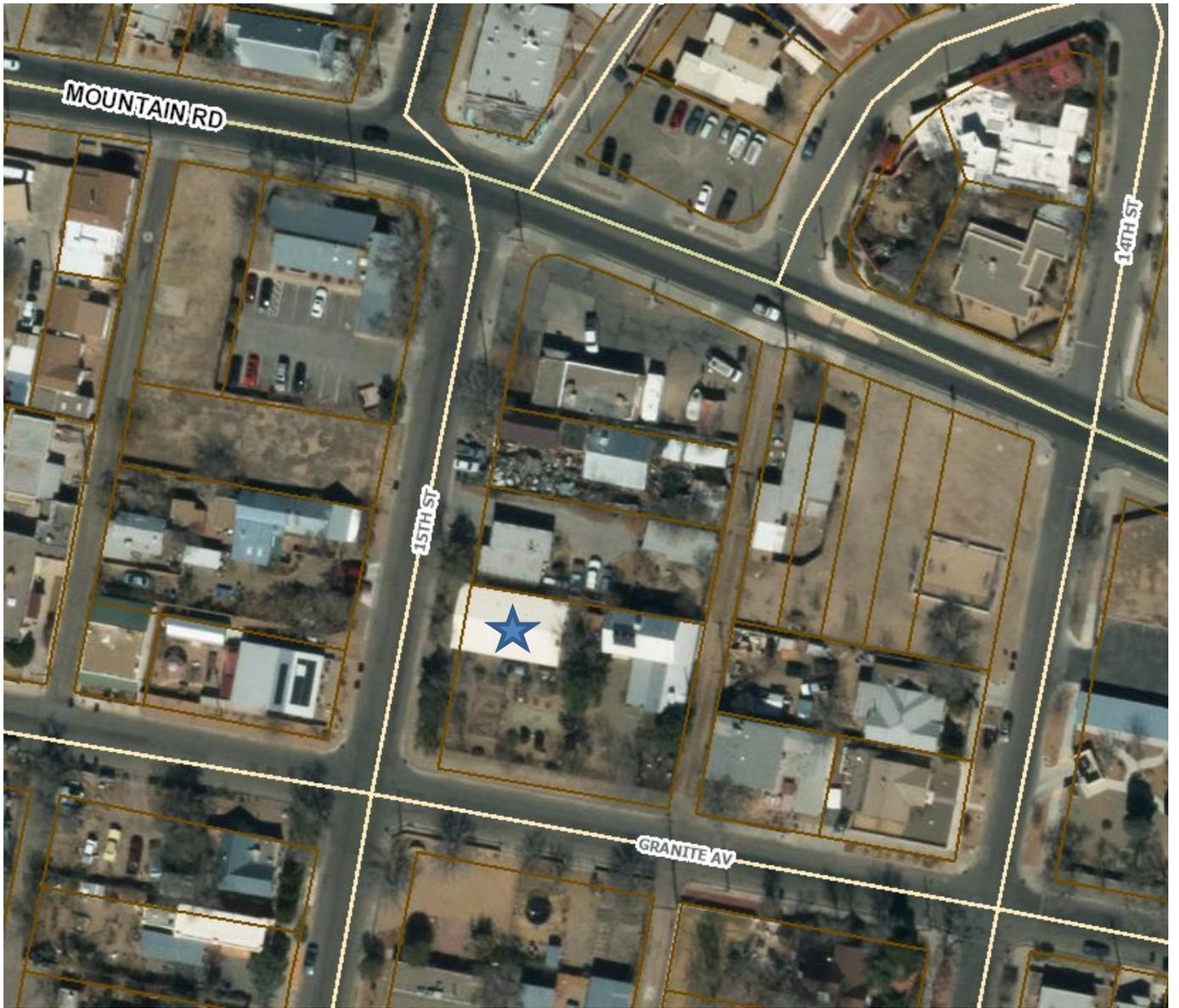
***Maggie Gould, Planning Manager***

### ***Summary of Analysis***

This request for a Sidewalk Variance was denied by the DRB on October 30, 2019. The DRB's decision to deny a sidewalk variance was based on analysis that the installation of sidewalk at this location would provide a 'public benefit' (DPM criteria). The EPC heard the appeal of the DRB decision on February 13, 2020 and voted to deny the appeal. The applicant appealed the EPC's decision and the appeal was heard by the LUHO on April 30, 2020. The LUHO chose to remand the case back to the EPC to address: provision of findings; the authority of the DRB to require sidewalks for this type of request; and to consider if the lack of sidewalk is a non-conforming site feature and, if it is, if a lot consolidation would expand the nonconformity.

The information in this staff report and the updated findings address these issues. Staff recommends that the EPC affirm its original decision and deny the appeal.





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IV. Conclusion ..... 12

Findings ..... 13

Recommendation ..... 13

**I. INTRODUCTION**

***Surrounding zoning, plan designations, and land uses:***

	<b><i>Zoning</i></b>	<b><i>Comprehensive Plan Area</i></b>	<b><i>Land Use</i></b>
<b><i>Site</i></b>	R1-A	Consistency	Residential
<b><i>North</i></b>	R-T	”	”
<b><i>South</i></b>	R-1A	”	”
<b><i>East</i></b>	R-1A	”	”
<b><i>West</i></b>	R-1A, R-T	”	”

***Request***

This appeal is being heard by the EPC because the Land Use Hearing Officer (LUHO) remanded the appeal to the EPC to address three main concerns regarding their February 13, 2020 decision.

***EPC Role***

The EPC is tasked with addressing the specific issues stated by the LUHO in his remand decision. The EPC does not need to re-hear the entire case, only the issues brought up by the remand instructions.

***Context***

The subject site is located within the Downtown Neighborhood Area, Character Protection Overlay 3.

The area is near parks, museums, historic sites, shopping, restaurants and a bike boulevard (Mountain road). The area experiences significant pedestrian traffic.

The site contains two houses on four lots. The original house has a driveway on 15<sup>th</sup> Street and includes the address of 906 15<sup>th</sup> Street. This home straddles two lots. The second house has a building permit from 2004 and appears to straddle three lots. There is a driveway to this house in use on Granite Avenue, but it is unclear if the driveway was permitted. One house per lot is allowed in the underlying zoning.

***History***

This request was originally heard by the Development Review Board (DRB) at multiple meetings in 2019, with final DRB decision on October 30, 2019. The decision was appealed and sent to the Land Use Hearing Officer. The LUHO and City Council became aware that the DPM makes the EPC the first appeal body for a sidewalk variance and, therefore, sent the case to the EPC to address the correct appeal procedure. On February 13, 2020, the EPC voted to deny the appeal. That decision was appealed and came before the LUHO on April 30, 2020. The LUHO decided to remand the appeal to the EPC.

**II. REMAND ISSUES**

The LUHO tasked the EPC with three main issues to address:

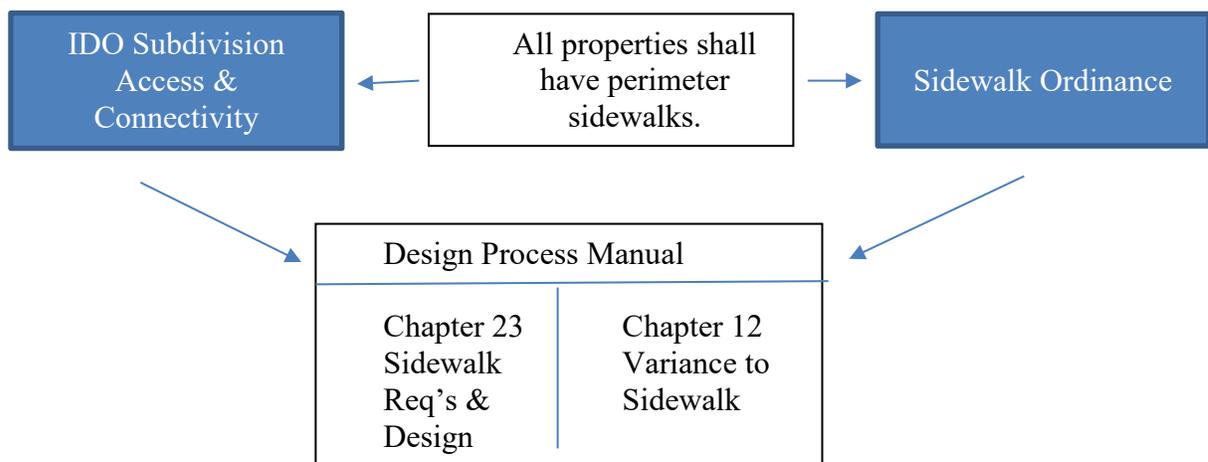
1. Provide substantive findings for the EPC decision;
2. Determine whether or not the DRB can require the applicant to construct the sidewalks; and
3. Determine if the existing lack of sidewalks is a non-conforming site feature subject to the non-conformance section of the IDO, and if it is, would a lot consolidation expand the nonconformity.

1. Provide Substantive Findings

During the February 13, 2020 EPC hearing, the EPC discussed the sidewalk variance request at length. The Sidewalk Ordinance, the DPM requirements, and IDO sidewalk requirements were all thoroughly discussed. The unfamiliar process of an appeal of the sidewalk variance before the EPC contributed to staff and EPC overlooking the need to approve findings to accompany the decision. This staff report includes findings for the EPC’s consideration and use.

2. The DRB has Authority to Require Sidewalks for a Replat (Re-subdivision) of Land

The IDO Section 14-16-5-3(D)(1)(a) (approved 2018) and the Sidewalk Ordinance, City Code of Ordinances, § 6-5-5-3 (approved 1983), require a property owner to provide perimeter sidewalks for pedestrian circulation. Each Ordinance references the Design Process Manual for sidewalk design standards (Chapter 23) and criteria for review of a variance to sidewalk installation (Chapter 12). This application for a minor subdivision—the main request is to re-divide land in order to sell one house—triggers the requirement in the IDO to provide a perimeter sidewalk.

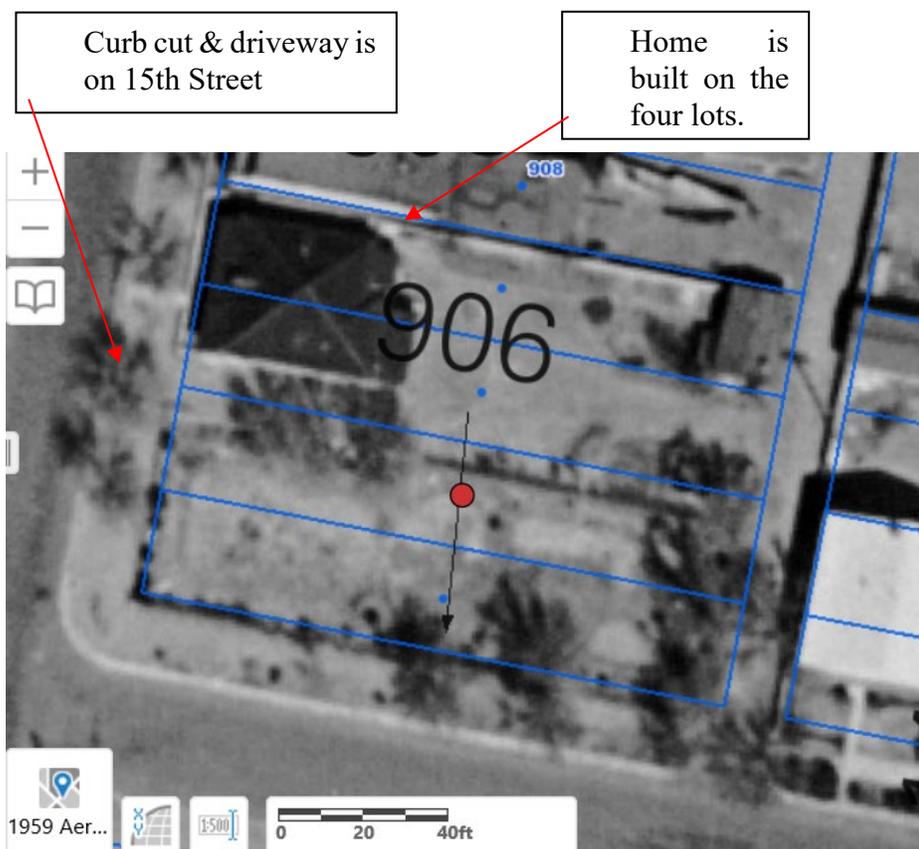


- a. The application for a Subdivision is subject to IDO Subdivision and Access and Connectivity Provisions.

The request to re-divide land at 906 15<sup>th</sup> Street NW triggers the requirements of Access and Connectivity (14-16-5-3) and, specifically, Pedestrian Circulation requirements for a perimeter sidewalk (14-16-5-3(D)(1)(a)). The applicant has four lots with lot lines running east and west. The lot lines cross the two houses on the property. The application meets the IDO definition of a subdivision for which the subdivision provisions of the IDO are applicable. The applicant wants to re-divide or replat so that there are two parcels divided by a lot line oriented north and south.

### Timeline of 906 15<sup>th</sup> Street:

#### Pre 1983



Property from AGIS 1959 Aerial Photo.

#### 1983

Sidewalk Ordinance goes into effect.  
The lack of sidewalk for the property becomes a nonconforming site feature.

2004

Second home is built on the four lots.  
Sidewalks are not installed in violation of Sidewalk Ordinance.  
Lack of sidewalk and driveway pad are non-compliant site features.

Second home is built in 2004



2014 Aer... WKID: 4326 Lat/Long ▲ Lat: 35.09604° N  
Property from AGIS 2014 aerial photo with lot lines in blue.

Unclear how curb cut on Granite came about.

2019

Current Requests:  
(1) Re-divide land to facilitate property sale.  
(2) Variance request to not install sidewalk as sidewalk requirement is triggered by IDO Subdivision-Access and Connectivity.

- (1) The application meets the IDO definitions of subdivide and subdivision triggering the requirements for a subdivision of land. The applicant is re-dividing land into two parts for future transfer of ownership.

(a) **“Subdivide**

To divide or re-divide land into 2 or more parts by whatever means to facilitate the present or future conveyance or other transfer of incidents of ownership or use.” (IDO, § 7-1, Definitions, p. 496)

The applicant had his realtor, Cathy Olson, speak on his behalf at the first DRB meeting of September 11, 2019. Ms. Olson stated:

“I am the realtor for Richard Chavez. ....He is requesting a, the request is to replat 4 lots into 2 lots and a sidewalk waiver for today’s request...would like to go ahead and split the property as there are now 2 residences on the corner. So in order for him to live in one and sell the other this will be required to get that done...” (Record AC-19-18, pp. 134-5)

The applicant is re-dividing land for future conveyance or other incidents of ownership or use and therefore triggers the requirements of a subdivision of land, including sidewalks.

(b) **“Subdivision**

1. The process of subdividing land into 2 or more lots or parcels for purposes of sale or development.

2. The parcel of land subdivided.” (IDO, § 7-1, Definitions, p. 496)

- (2) When the application is for a subdivision of land that creates fewer than 10 lots, the IDO Section 14-16-6-6(I)(a)(1) identifies it as a ‘Subdivision of Land-Minor’.<sup>1</sup>
- (3) The IDO Section 14-16-6-6(I)(3) ‘Review and Decision Criteria’ for a Subdivision of Land-Minor require compliance with the IDO, DPM, and other adopted City regulations:

6-6(I)(3) **Review and Decision Criteria**

An application for a Subdivision of Land – Minor shall be approved if it meets all of the following criteria:

---

<sup>1</sup> IDO 14-16-6-6(I)(a) Subdivision of Land – Minor. Applicability. “Approval of a subdivision of land within the City that: 1. Creates 10 or fewer lots on any single lot that has been recorded as a single lot for at least 3 years previously.”

- 6-6(I)(3)(a) 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.
- 6-6(I)(3)(b) Any Variances granted to development standards applicable to the subdivision in Section 14-16-5-3 (Access and Connectivity) or Section 14-16-5-4 (Subdivision of Land) and any deviations to other IDO standards granted within the thresholds established by Section 14-16-6-4(O) (Deviations) are documented in the application.

- (a) The IDO Access and Connectivity requires a perimeter sidewalk per IDO 14-16-5-3(D)(1):

**Sidewalks in Residential Development**

- (a) Perimeter sidewalks shall be provided in accordance with the DPM...
- b. The application for a Subdivision is also subject to the Sidewalk Ordinance which requires a perimeter sidewalk.

The 'Review and Decision Criteria' for a Subdivision states that the application is subject to 'other adopted City regulations.' The Sidewalk Ordinance, § 6-5-5-3 requires all properties to have a perimeter sidewalk:

**Pedestrian Sidewalk, Drive Pad, And Curb and Gutter required:**

All properties within the city shall have sidewalk, drive pad, curb ramps, curb and gutter in accordance with the standards set forth by §§6-5-5-1 et seq., unless a variance from these standards is allowed through the procedures established by §§6-5-5-1 et seq. or unless such sidewalks, curb ramps, drive pads, curbs and gutters were constructed under standards previously in force. Such previously constructed improvements shall be considered non-conforming and as such may be repaired and maintained, however, if and when replacement becomes necessary, it shall be replaced according to the current standards or variance procedures of §§6-5-5-1 et seq. Compliance with the provisions of §§6-5-5-1 et seq. shall be the responsibility of the property owner. The cost of installing sidewalk shall be borne by the abutting property. On property in residential zones where only houses and townhouses are allowed, and where the lot abuts public streets at both its front and the rear lot lines, the property does not bear the cost of constructing missing sidewalk abutting the rear lot line where the property does not have the legal right to vehicular access from that street; this exception applies only to lots platted before June 29, 1983 (the effective date of the city's Subdivision Ordinance, set forth in § 14-16-5-4). ('74 Code, §8-6-3) (Ord. 219- 1972; Am. Ord. 39-1981; Am. Ord. 77-1989; Am. Ord. 2017-025)

- c. The application for a Subdivision is subject to the Development Process Manual (DPM) which requires a perimeter sidewalk on a local street.

The DPM cross references the Sidewalk Ordinance in requiring a perimeter sidewalk in Chapter 23, Section 5:

## **Section 5. MISCELLANEOUS STREET DESIGN CRITERIA**

### **A. Sidewalks**

Refer to Tables 23.2.1.A and 23.2.1.B for detailed information about sidewalk widths and location.

Sidewalks must be provided for all properties within the City of Albuquerque as required by the Sidewalk Ordinance. The fundamental requirements governing sidewalk design are established by this ordinance. Sidewalk designs must provide for the mobility, safety and comfort of the pedestrian and provide for adequate pedestrian access to abutting property. Pertinent sidewalk design criteria are collected herein for the convenience of the designer.

3. The property appears to have nonconforming site features that are now non-compliant site features.

The LUHO remand asks the EPC to address:

...the threshold question Appellant raised in his appeal--whether the lack of sidewalks on a fully developed site is a “non-conforming site feature” under the IDO. Thus, the EPC must also determine if the condition of the subject site (a developed site without sidewalks) is (or is not) an existing non-conforming site feature under the IDO. If the EPC concludes that the lack of sidewalks is a non-conforming site feature as contemplated by the IDO, the EPC must also decide whether the lot consolidation is (or is not) an expansion of the nonconforming site feature under the IDO. (LUHO Recommendation, AC 20-6, lines 43-52)

- a. The lack of sidewalk for the original structure built prior to 1983 was a nonconforming site feature in the past.

The IDO, page 478, defines nonconformity:

A structure, use, lot, sign, or site feature that does not conform to applicable zoning but that did conform to applicable zoning in effect at the time it was built or developed.

The curb and gutter with no sidewalk that were constructed at 906 15<sup>th</sup> Street under previous standards would be nonconforming by 1983 when the Sidewalk Ordinance went into effect. The date of construction of the original home is unclear, but was before 1983. The driveway for this house has a curb cut on 15<sup>th</sup> Street. The house is not contained

within one platted lot. The lack of sidewalk for this structure became a nonconforming site feature in 1983.

The Sidewalk Ordinance, Section 6-5-5-3 also identifies the lack of a sidewalk as non-conforming:

...unless such sidewalks, curb ramps, drive pads, curbs and gutters were constructed under standards previously in force. Such previously constructed improvements shall be considered non-conforming.

The lack of sidewalk, or nonconforming site feature, could legally continue until new development activity occurred on the site. New activity occurred in 2004.

- b. The lack of sidewalks is no longer a non-conforming site feature, rather it is a non-compliant site feature because a sidewalk should have been constructed in 2004 when a second structure was permitted.

The second house on the property was built in 2004 (see attachments for record of building permit).<sup>2</sup> When a building permit for construction was sought, the lots should have been re-platted (a structure cannot cross lot lines) and a perimeter sidewalk should have been built per the Sidewalk Ordinance. Staff researched the building permit and found a permit was issued for the house in 2004, but staff could not find any specifics regarding the permit pertaining to sidewalks or re-plat of the lots. Also, staff did not find a permit for the curb cut on Granite Avenue which leads to the driveway for the second house. The City requires the applicant to provide evidence of that permit or obtain a proper permit for the work already done.

- c. Since the property's lack of a sidewalk is a non-compliant site feature, the nonconforming provisions of the IDO do not apply to the property.

In 2004, the entire property was subject to the rules and regulations in place at that time and should have been brought up to date with current standards, including sidewalk per the Sidewalk Ordinance. The lack of sidewalk on the property transformed into a non-compliant site feature at that time.

In addition to this non-compliance issue, the current request to replat the property to allow for the sale of one of the structures also fully triggers the requirements for all IDO, DPM, and other City regulations (Sidewalk Ordinance) to be applied to the property. (See previous discussion.) Therefore, the DRB had the authority to require the sidewalks in conjunction with this replat request. The applicant acknowledged that authority by submitting a separate application for a sidewalk variance. That variance was analyzed in the context of the property and the surrounding neighborhood. The request did not meet

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<sup>2</sup> The site was zoned SU-2 TH under the 1976 Downtown Neighborhoods Sector Development Plan. This zone referenced the R-T zone which did not limit houses to one per lot. The existing houses are non-conforming structures and uses in the current R-1A IDO Zoning District.

the criteria required to allow no sidewalk installation, therefore the DRB denied the variance.

- d. The question of ‘lot consolidation’ triggering an expansion of a nonconforming site feature must be answered in context. The question is not consistent with the context of this application.

The LUHO asked the EPC to consider: if no sidewalk is an existing non-conforming site feature under IDO, then the EPC must decide whether lot consolidation is or is not an expansion of the nonconforming site feature of IDO. (See LUHO Recommendation, AC 20-6, lines 43-52)

The first part of the question was answered above in discussing how the 2004 construction at 906 15<sup>th</sup> Street transformed the lack of sidewalk to be *non-compliant* instead of *nonconforming*. Therefore, the LUHO question is moot.

The second part of the question regards ‘lot consolidation.’ The application at 906 15<sup>th</sup> Street is not a ‘lot consolidation’ in the strictest sense because the request is more precisely a re-dividing of the land: the lot lines are changing from a north-south orientation to an east-west orientation. If no sidewalk is required with this replat request and the older home is sold to a new owner, that owner would be buying the corner where the lack of sidewalk has the longest linear feet and includes frontage on both 15<sup>th</sup> and Granite Streets.

The third part of the questions regards ‘expansion’ of the ‘lack’ of a *site feature* and if the ‘lack’ of something could be an ‘expansion.’

The IDO states that a nonconforming site feature cannot be expanded:

**IDO Section 14-6-6(C)**

**Expansion of Nonconforming Use or Structure; (1) Applicability**

...Nonconforming site features may not be expanded.

This IDO Section does not seem to anticipate that an ‘expansion’ would apply to the ‘lack’ of a site feature.

It is difficult to answer the LUHO question because the elements of the questions are not the clear context of the application at 906 15<sup>th</sup> Street. The most relevant fact is that the lack of sidewalk is non-compliant and, therefore, nonconforming provisions of the IDO do not apply.

It is important to note, that if the City were to approve a variance to the sidewalk requirements at 906 15<sup>th</sup> Street with the replat action, then the non-compliant lack of sidewalk would become an approved variance for all future development activity on the property.

4. The LUHO stated that he did not receive a complete copy of the record.

The LUHO stated the record was not complete. Planning Staff conveyed the record for AC-20-6 to the Council staff. Clear communication was not given to identify that AC-19-18 was to accompany the Record of AC-20-6. Both AC-20-6 and AC-19-18 are the same appeal. Council staff was not aware that they needed to provide both records to the LUHO. This error will be corrected for all future proceedings.

### **III. AGENCY & NEIGHBORHOOD CONCERNS**

#### ***Reviewing Agencies***

The request was reviewed by all members of the DRB and was denied.

#### ***Neighborhood/Public***

Staff did not receive any comments from members of the public at any point during this process.

### **IV. CONCLUSION**

The EPC acted within its authority, although substantive findings should have been provided. This lack of substantive findings has been corrected with this remand staff report.

The DRB did not act fraudulently, arbitrarily, or capriciously. The DRB applied the requirements of the IDO, DPM, and Sidewalk Ordinance and the decision was supported by substantial evidence.

Staff recommends that the EPC affirm the original EPC decision and deny the appeal, based on the findings provided and the information in the record.

**Findings, AC-20-6 (2019-002811, June 11, 2020)**

1. This is a remand from the Land Use Hearing Officer to the Environmental Planning Commission.
2. The LUHO tasks the EPC with three main issues to address: the lack of substantive findings; whether or not the DRB can require the applicant to construct the sidewalks; and if the existing lack of sidewalks is a non-conforming site feature subject to the non-conformance section of the IDO. These issues are addressed as demonstrated by the following findings.
3. These findings are substantive and provide clear basis for the EPC decision pursuant to IDO §6-4(U)(3)(c)4.
4. The Applicant's request for a variance to the sidewalk standards accompany an application for a Subdivision – Minor for a an approximately 0.32-acre site at 15<sup>th</sup> and Granite NW.
5. IDO §6-6(I)(a) Review and Decision Criteria states that a Subdivision – Minor shall be approved if it meets “[a]ll 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.” IDO §6-6(I)(a)(3). The Sidewalk Ordinance 6-5-5-3 is an adopted City regulation.
6. The DRB also has the authority to require sidewalks in association with any action on a property that comes before the DRB per the Sidewalk Ordinance, §6-5-5-3, which states that all properties within the city shall have sidewalk, drive pad, curb ramps and curb and gutter unless a variance from these standards is obtained. DRB denied the variance request to the sidewalk standards, thereby requiring a sidewalk.
7. The Development Process Manual (DPM) references the Sidewalk Ordinance and sets out the variance procedure for installation of a sidewalk. The review criteria regarding allowing no sidewalk installation in the DPM and contained in IDO (pre May 2019) are substantially similar. The Transportation Engineer stated that both sets of criteria were used to determine that the request did not meet the variance/waiver criteria. *See AC-19-18, p. 9.*
8. The R-1A zone allows one house per lot. The current platting of the site has two houses on portions of four lots. The second house on the property was built in 2004; the underlying zoning at the time a, SU-2 TH did not limit houses to one per lot.
9. The IDO Section 14-16-1-4 (A), Applicability, states that the IDO applies to all private land in the City and all owners and occupants are required to comply with standards. Additionally, all development after the IDO effective date, May 18, 2018, is subject to IDO standards.
10. The IDO defines “development” as “[a]ny activity that alters the ground on a property. Development may include construction of buildings, structures, or streets; installation of landscaping, infrastructure, utilities, or site features; and/ or activities to prepare land for such construction or installation, such as grading. For the purposes of this IDO, this term included new development and redevelopment.” The applicant states on the record that it is his intent to subdivide the property to sell off a dwelling unit on one of the proposed lots. *See AC-19-18, p. 134-5.* The applicant also has a fence in the public right-of-way which must be removed or he will have to obtain a revocable permit from the city.
11. With the new development and construction in 2004, the owner should have re-platted the lots to create new lots that did not split the buildings and should have provided a sidewalk. In

- 2004, the lack of sidewalk transformed from being a *nonconforming* site feature to become a *non-compliant* site feature.
12. The application was analyzed using the same review criteria as other similar requests to forego installation of a sidewalk.
  13. The subject site does not meet the criteria for a Sidewalk Variance under DPM Chapter 12. The subject site is in an active pedestrian area with a medium intensity land use. The provision of a sidewalk in this area will ‘contribute to the public welfare.’
  14. The majority of the area has sidewalks. *See* AC-19-18, p. 10, 11.
  15. The DRB did not act arbitrarily or capriciously and acted within the authority granted by the IDO, the DPM, and the Sidewalk Ordinance.
  16. The requirement for property owners to provide and maintain sidewalks in the public right of way abutting their property per the Sidewalk Ordinance, § 6-5-5-3, is applicable to the subject site and any property that comes before the DRB for any development action. The DRB has the authority to require this public infrastructure per the Review and Decision Criteria for Subdivision – Minor (IDO Section 6-6(I)(a)).

***Recommendation***

***DENIAL of appeal of Sidewalk Variance denial for Project #:PR- 2019-002811, VA-2019-00288, AC-20-6, AC 19-18 for Lots 7-10 Block 44 Perea Addition, located at NEC of 15<sup>th</sup> St. NW and Granite Ave. NW, based on the preceding Findings.***

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Maggie Gould  
***Planning Manager***

Attachments:

1. 2004 Building permit for the second structure at 906 15<sup>th</sup> Street.
2. Map of existing sidewalks in the surrounding neighborhood.
3. LUHO decision AC-20-6
4. Appeal Record

***Notice of Decision cc list:***

Richard Chavez

# BUILDING PERMIT AND FEES

May 12, 2020

Page 1 of 1

**BUILDING PERMIT NBR:** 401213      **DATE:** 08/19/2004  
**TYPE OF APPLICATION:** 1      New Building  
**ADDRESS:** 906      15TH      ST      NW      A  
 ALBUQUERQUE      NM      87104  
**LEGAL DESC:**      **LOT:** 7-10      **BLOCK:** 44      **STREET SEQ NBR:**      **DASZ:**5173  
**SUBDIVISION:** PEREA ADDN      **TRACT:** 2700      **PARCEL:**      **UNIT:**  
**CITY COUNCIL DISTRICT:**      **LAND USE CODE:** 1111      **CITY ZONE:**SU-2      **ZONING MAP:** J-13  
**UPC:** 101305837530810901 **COMMENTS:**

**OWNER**  
**NAME:** RICHAD G & PHOEBE CHAVEZ      **PHONE:** 505-242-9854  
**ADDRESS:** 906      15TH      ST      NW      A  
 ALBUQUERQUE      NM      87104

**ARCHITECT**  
**NAME:** FRANCISCO LEFEBRE      **PHONE:** 505-247-1524  
**ADDRESS:**

**CONTRACTOR**  
**NAME:** HOMEOWNER / RICHARD G CHAVEZ      **PHONE:** 505-242-9854  
**ADDRESS:** 906      15TH      ST      NW  
 ALBUQUERQUE      NM      87104  
**STATE LICENSE NBR:**      **STATE TAX NBR:**      **CITY TAX NBR:**

**CONSTRUCTION**  
**NBR STORIES:** 2      **SQ FOOTAGE:** 2182      **EST VALUE:** 90000      **PLAN CHECK VALUE:** 90000  
**NBR APT UNITS:** 0      **NBR APT BLDGS:** 0      **NBR MOTEL UNITS:** 0      **LOT ACREAGE:** .32  
**OWNERSHIP:** 2  
**DESCRIPTION:** SINGLE FAMILY DWELLING W/GARAGE  
**USE OF BLDG:** 7      **OCCUPANCY GROUP:** R3U1  
**TYPE OF CONSTRUCTION:** VN      **YEAR OF APPLICABLE CODE:** 1997      **REISSUE PERMIT NBR:**

DATE	SESSION NBR	CODE	AMOUNT	ADJUSTMENT	CODE DESCRIPTION	SUB PERMIT NBR
01/27/2004	01	01	300.22			0
01/27/2004	01	02	461.88			0
01/27/2004	01	25	20.00		Zoning Plan Check Fee	0

# BUILDING INSPECTIONS AND FEES FOR PERMIT 401213

## SUB-PERMIT 1

May 12, 2020

Page 1 of 1

<b>BUILDING INFORMATION:</b>			
<b>PERMIT NBR:</b>	401213	<b>DATE:</b>	08/19/2004
<b>ADDRESS:</b>	906 ALBUQUERQUE	15TH ST NM 87104	NW A
<b>CONTRACTOR</b>			
<b>NAME:</b>	HOMEOWNER / RICHARD G CHAVEZ		
<b>ADDRESS:</b>	906 ALBUQUERQUE	15TH ST NM 87104	NW
<b>STATE LICENSE NBR:</b>			
<b>SUB-CONTRACTOR</b>			
<b>NAME:</b>			

### INSPECTIONS:

PERMIT NBR	SUB PERMIT NBR	TYPE	DATE	RECEIVED BY	ITEM	RESULT	INSPECTION DATE	INSPECTOR	DESCRIPTION
401213	1	B	06/18/2004	PHY	FTI	OK	06/19/2004	FJC	
			06/18/2004	PHY	IFT	OK	06/19/2004	FJC	
			06/18/2004	PHY	FT	OK	06/19/2004	FJC	
			06/29/2004	KMS	FT	OK	06/30/2004	FJC	PORCH
			08/23/2004	MTM	FR	YT	08/24/2004	FJC	#1 RAMSET OR ANCHOR BOLT EXT BASEPLATES AT 6' OC WITHIN 1' OF ENDS MIN 2 PER PIECE #2 DOUBLE JOIST HANGER REQ'D AT DEN #3 DEVIATION FROM PLAN AT BALCONY CANTILEVER #4 OK TO INSULATE
			08/25/2004	KIM	LAT	OK	08/26/2004	FJC	
			08/25/2004	KMS	RFR	OK	08/26/2004	FJC	LESS BALCONY
			08/25/2004	KMS	FRI	OK	08/26/2004	FJC	LESS BALCONY
			08/30/2004	KIM	FR	OK	08/31/2004	FJC	
			08/30/2004	KIM	FRI	OK	08/31/2004	FJC	
			12/02/2004	MTM	FIN	OK	12/03/2004	FJC	FRI PM PLEASE CALL RICHARD (SAYS ITS READY?) 934-5979 30 DAY TEMP ON 12-3-04 PENDING RESOLUTION OF FIRE SUPPRESSION SYSTEM C.O. # 70053 AND REPAIR HANDRAIL
			12/27/2004	JDD		FF	12/27/2004	FJC	VERIFY HANDRAIL AM CO ISSUED #70539
			12/27/2004	JDD	RFIN	OK	12/27/2004	FJC	VERIFY HANDRAIL AM CO ISSUED #70539
			12/27/2004	JDD			12/27/2004	FJC	VERIFY HANDRAIL AM CO ISSUED #70539

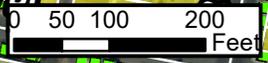
### FEES:

PERMIT NBR	SUB PERMIT NBR	TYPE	DATE	SESSION NBR	CODE	AMOUNT	ADJUSTMENT	DESCRIPTION
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### Legend

	PR-2019-002811 Site Area		MX-H
	City Parcels		MX-FB-ID
	Existing Sidewalks		MX-FB-FX
<b>IDO Zoning</b>			MX-FB-UD
	R-A		NR-C
	R-1A		NR-LM
	R-1B		NR-GM
	R-1C		NR-SU
	R-1D		NR-PO-A
	R-T		NR-PO-B
	R-MC		NR-PO-C
	R-ML		NR-PO-D
	R-MH		PD
	MX-T		PC
	MX-L		UNCL
	MX-M		



2/6/2020

040

**BEFORE THE CITY OF ALBUQUERQUE  
LAND USE HEARING OFFICER**

**APPEAL NO. AC-20-6**

**Project PR-2019-002811; SD-2019-00158; VA-2019-00288**

**RICHARD CHAVEZ, Appellant,**

1           This is an appeal from a decision of the Environmental Planning Commission (EPC) in  
2           which the EPC denied an appeal and upheld a decision of the Development Review Board  
3           (DRB) regarding a sidewalk variance/ and or waiver. This appeal originated at the DRB with  
4           the Appellant’s application to consolidate four lots into two lots to conform his land to how  
5           it developed. Because the four lots lack sidewalks affronting the City streets, the DRB  
6           required that the Appellant install sidewalks before it would approve the lot consolidation.  
7           Appellant appealed the DRB’s decision regarding sidewalks. The appeal made its way to  
8           the EPC.

9           Briefly, the record shows that Appellant’s four lots have two houses on them.  
10          Apparently for refinancing, Appellant desires to create one lot for each home [See Map at R.  
11          34A]. The evidence further shows that one of the homes was constructed before 1947  
12          (purchased by Appellant’s parents), and Appellant constructed the second home in 2004 [R.  
13          52A]. The two homes are located at the northeast corner of Granite Ave. and 15th Street,  
14          NW.

15          Apparently, when Appellant applied for the lot consolidation, he was told by City  
16          Planning Staff that because there are no sidewalks on his lands affronting Granite Ave. and

17 15<sup>th</sup> Street, Appellant must install sidewalks before the City could approve the lot  
18 consolidation. Appellant then applied for a variance for the width of the sidewalk and he also  
19 applied for a waiver from having to install sidewalks [R. 11A]. After deferrals, in a public  
20 meeting on October 30, 2019, the DRB denied the application for the variance and for the  
21 waiver. However, there is no record of the DRB processes included in this appeal record.  
22 Appellant filed a timely appeal to the City Council [R. 2A]. A remote Land Use Appeal  
23 hearing was held on April 30, 2020.

24 The record of this appeal is lacking. This record does not include evidence of the DRB’s  
25 decision making, the minutes of its public meetings, or its decision(s) on the Appellant’s  
26 application. I note for the Planning Director that under the IDO, § 6-4(U)(3)(d), “the  
27 Planning Director shall prepare and transmit a record of the appeal together with all appeal  
28 material received...” This record that was transmitted to the City Council is inadequate and  
29 incomplete.

30 In addition, in reviewing the record that is available, although the EPC held an appeal  
31 hearing on Appellant’s appeal, I am unable to determine whether the EPC erred because the  
32 EPC made no findings. Pursuant to IDO § 6-4(U)(3)(c)4 of the IDO, when the EPC sits as  
33 an appellate body, it “shall make findings exclusively on the record.<sup>1</sup> As indicated above,  
34 although the EPC sat as an appellate body in this matter, it failed to make any substantive  
35 findings in its Official Notification of Decision [ R. 3A]. The only finding that the EPC made  
36 in this appeal is a conclusion that it “voted to deny the appeal” [R. 3A]. Further, when the  
37 EPC performs appellate review hearings, its’ decision “*shall*” be based on whether the DRB

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1. Although this section may seem to relate to only to one specific type of appeal, when reading this section and § 6-4(U)(4) together, it is applicable in this appeal.

38 (decision-making body) satisfied the three criteria of § 6-4(U)(4). (Emphasis added).  
39 Without any substantive findings from the EPC other than its denial of the appeal, I find that  
40 the EPC’s decision is deficient. The IDO requires that the EPC support its decision on  
41 substantive findings on the record. This matter will have to be reheard by the EPC so that it  
42 can do what is required under the IDO.

43 In doing so, I expressly instruct the EPC to address, among the other issues in this  
44 appeal, the threshold question Appellant raised in his appeal---whether or not the DRB can  
45 require sidewalks under the facts and circumstances in this matter. I view the threshold  
46 question raised by Appellant as involving the question whether the lack of sidewalks on a  
47 fully developed site is a “non-conforming site feature” under the IDO. Thus, the EPC must  
48 also determine if the condition of the subject site (a developed site without sidewalks) is (or  
49 is not) an existing non-conforming site feature under the IDO. If the EPC concludes that  
50 the lack of sidewalks is a non-conforming site feature as contemplated by the IDO, the EPC  
51 must also decide whether the lot consolidation is (or is not) an expansion of the  
52 nonconforming site feature under the IDO.

53   
Steven M. Chavez, Esq.  
Land Use Hearing Officer

May 8, 2020

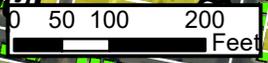
Copies to:

Appellant  
City Council  
City Staff



### Legend

	PR-2019-002811 Site Area		MX-H
	City Parcels		MX-FB-ID
	Existing Sidewalks		MX-FB-FX
<b>IDO Zoning</b>			MX-FB-UD
	R-A		NR-C
	R-1A		NR-LM
	R-1B		NR-GM
	R-1C		NR-SU
	R-1D		NR-PO-A
	R-T		NR-PO-B
	R-MC		NR-PO-C
	R-ML		NR-PO-D
	R-MH		PD
	MX-T		PC
	MX-L		UNCL
	MX-M		



2/6/2020

044

<p align="center"><b>Development Process Manual (DPM) - Chapter 12 - Sidewalk Variance</b></p>
<p>Sidewalk ordinance states that “all properties within the City of Albuquerque shall have sidewalk, drivepad and curb and gutter in accordance with the standards set forth by the sidewalk ordinance unless a variance from these standards is allowed through the procedures established by the Sidewalk Ordinance...” General sidewalk design criteria promotes mobility, safety, and comfort of the pedestrian and allows adequate pedestrian access to abutting property.</p> <p>The mayor “may” give a variance: Subject to site development plan review.</p> <ol style="list-style-type: none"> <li>a. Subject to site development plan review.</li> <li>b. Maintain or develop a design plan not consistent with uniform sidewalk installation.</li> <li>c. Historical significance and variance needed to maintain significance.</li> <li>d. Low intensity land use and sidewalk will not contribute to the public welfare.</li> <li>e. Insufficient right-of-way to permit the construction of a sidewalk.</li> <li>f. A sidewalk variance would preserve trees.</li> <li>g. Pre-existing obstructions that cannot be easily relocated or should not be altered.</li> <li>h. Adjoining sidewalks are non-standard as to width and or location.</li> <li>i. Mature landscaping would be damaged to degree it outweighs public utility of sidewalk.</li> </ol>
<p align="center"><b>IDO 6-6 (L)(3) – Variance DRB – Page 406</b></p>
<ol style="list-style-type: none"> <li>1. Any of the following applies             <ol style="list-style-type: none"> <li>(a) Special circumstances- hardship that is substantial, topography, etc.</li> <li>(b) Pre-existing obstructions.</li> <li>(c) Historical significance, variance is needed to maintain this.</li> <li>(d) Established neighborhood character or landscaping would be damaged to a certain extent.</li> <li>(e) Variance would encourage flexibility, economy, etc.</li> </ol> </li> <li>2. Not contrary to public safety, health or welfare.</li> <li>3. No significant material adverse impacts on surrounding properties</li> <li>4. Will not hinder future planning, ROW acquisition, building public infrastructure.</li> <li>5. Will no significantly conflict with adopted plans, ordinances, codes.</li> <li>6. Will not encourage development in floodplain.</li> <li>7. Will not undermine the intent of IDO or zone district.</li> <li>8. Will not allow a lot that does not meet IDO standards.</li> <li>9. Variance is the minimum necessary to avoid hardship.</li> <li>10. Variance for sidewalk requirements meets criteria below: 6-6-3(L)(b).</li> </ol>
<p align="center"><b>IDO Section 6-6-3(L)(b) – Page 408</b>  <b>Variance to Sidewalk Requirements was Eliminated by R-19-150</b></p>
<ol style="list-style-type: none"> <li>A. Low intensity land use; normal contribution of sidewalks will not contribute to the public welfare; absence will not create a gap of 1 or more sides of subject property.</li> <li>B. City’s right-of-way is of insufficient width, but sufficient right-of-way to meet ADA or PROWAG.</li> <li>C. Adjoining sidewalks are non-standard as to width and/or location. Variance would allow sidewalks to match in width.</li> </ol>

EPC Minutes, Agenda Item 1  
June 11, 2020

CITY OF ALBUQUERQUE

ENVIRONMENTAL PLANNING COMMISSION  
PUBLIC ZOOM VIDEO CONFERENCE

M I N U T E S

Agenda Item 1  
AC 20-6, Project AC 1918, PR 2018002811  
SI 201900158 and VA 201900288

June 11, 2020

**COMMISSION MEMBERS:**

Dan Serrano, Chairman  
David Shaffer, Vice Chairman  
Joseph Cruz  
Johnathan R. Hollinger  
Richard Meadows  
Robert Stetson  
Tim MacEachen  
Gary L. Eyster, P.E. (Ret.) (Excused)

**STAFF PRESENT:**

Russell Brito, Planning & Urban Development Mgr.  
Maggie Gould, Planner  
Shahab Biazar, Engineer  
Alfredo Salas, Recording Secretary  
Nicole Sanchez, DRB Attorney

**EPC Minutes, Agenda Item 1**  
**June 11, 2020**

**CHAIRMAN SERRANO:** So let's proceed to Project Number 1, Agenda Item Number 1, Project 2019-002811.

Ms. Gould, please.

**MS. GOULD:** Mr. Chairman, give me just a moment while I try to figure out about sharing my screen. There we go.

Thank you. I apologize for this. I'm having a hard time getting Zoom feed back up

**MR. BRITO:** Maggie, you are sharing your screen.

**MS. GOULD:** Oh, I am. Okay. Great. I can't see it on my screen. I apologize for that.

Good morning, Mr. Chair and Commissioners, this is Item Number 1, AC 20-6, a remand from a land use hearing officer. This is also with you under Project AC 1918, PR 2018002811, SI 201900158, and VA 201900288.

This subject site is located at northeast corner of 15th Street and Granite, in the downtown Sawmill area. The applicant and the agent for this request are Richard Chavez. And, as we said, this is a remand from the land use hearing officer. This site is approximately 3.2 acres and is zoned R-1A. There is no proposed zone change.

As you can see, here is the subject site. The subject property contains two houses: The original house, built prior to 1959; and the second house, built in 2004. And, again, this is Mountain Road. Old Town is this way, downtown is this way.

The overview of -- of this project, an applicant for a sidewalk waiver was filed with a plat application in July of 2019. The DRB denied this sidewalk waiver in October of 2019, and the applicant appealed.

The appeal was sent to the land use hearing officer but was remanded to the EPC as the EPC was the correct body to hear the appeal. The EPC denied this appeal on February 13th, 2020, and the applicant, again, appealed.

This appeal was heard by the land use hearing officer April 30th, 2020, and was remanded to the EPC to address three key issues: 1, the lack of substantial findings in the notice of decision; 2, the authority of the DRB to require sidewalks; and 3, the sidewalks as a nonconforming site feature. Meaning, were the sidewalks a nonconforming site feature and therefore subject to the nonconformance regulations of the IDO, and if that was the case, did this platting action constitute an expansion of that nonconforming site feature.

As with regard to the first issue, substantial finding, the staff report does contain substantial findings that provide a basis for the EPC decision. As always, the EPC may adopt these findings, they may add to these findings, they may create new findings. But the provision of findings does satisfy this first issue for the land use hearing officer.

Regarding the second issue, which is the DRB authority, the DRB has authority to require sidewalks from several different places: 1, the IDO 14-16-1-4(A), applicant. It says the IDO applies to all private land within the city and all owners and occupants are required to comply with that standard. The IDO Section 14-16-5-3(D)(1)(a), which was approved in 2018 -- the

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IDO, as we know was approved in 2018 -- requires perimeter sidewalks. The sidewalk ordinance also requires sidewalks.

So if you look at this chart, you two places in our city rules where sidewalks are required. If you look at the Development Process Manual, you have Chapter 23 that has requirements for the design of the sidewalks, and Chapter 12, which requires process to vary from those sidewalks.

Additionally, this is a subdivision action. The IDO defines a subdivision or to subdivide as to redivide land -- to divide or redivide land into two or more parts by whatever means to facilitate the present or future conveyance or transfer of incidence of ownership or use; meaning, you are breaking up or putting back a piece of land for development or to convey it to somebody else.

So when we look down into the IDO requirements for the review and decision criteria for a minor subdivision, which is what this action would have been, Section 14-16-6-6(I)(3)(a) says all applicable provisions of the IDO and the DPM and other adopted regulations must be there in order for us to approve this subdivision.

So additionally, the applicant has stated on the record that the purpose of this platting action is to create two lots so that the second lot can be sold off. And this platting action creates two lots that divide the property in half and remove the existing antiquated platting. The property, if you look on Page 7 of the staff report, this shows clearly the city parcels.

I think it's important to note here that the parcels in blue are the city parcels, which are the individual parcels of land. The parcels in brown are the assessor's parcel, which just show all of those lots under common ownership.

So this planning action removes the lot lines going through buildings and -- and cleans up the site, but, again, the -- you know, the applicant's stated purpose is that this is -- this is to convey property.

So that brings us to the third issue that we were tasked to look at by the LUHO, which is nonconformance. So in order for something to be legally nonconforming, it must have been legal at the time it was constructed and then made nonconforming by the adoption of new rules.

So in 1983, when the city adopted the sidewalk ordinance, that would have made the sidewalks -- that would have made a lack of sidewalk legally nonconforming. Because the sidewalks would not having required prior, so not having them would have been a legally nonconforming issue and these would have been allowed to continue.

In 2004, when a building permit for the second house on this lot was pulled, the sidewalk ordinance was in effect, and the sidewalks should have been constructed at that time. So because the sidewalks would have been required, the sidewalks are now not nonconforming, they are noncompliant, because they would have been legally required at the time that was built.

And I think the other thing is, when we look at the IDO and the intent of the IDO, the IDO does not seem to anticipate that expansion would be applied to a lack of something. We generally think of expansion as having something that is already there and we are adding to that use or changing it in some way, rather than

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that something the isn't there and we are adding something.

So the IDO doesn't allow the expansion of nonconforming site features. And in this case, this sidewalk would not be a nonconforming site feature because it would have been legally required at the time the building permit for the second house was -- was put into place.

So to conclude, the remands asks the EPC to consider these three things: The findings, which I think are clear in the staff report. And, again, it is at the pleasure of the commission to adopt those findings or add to them as you see fit; the DRB authority, I think that the staff report has gone through several ways in which the DRB does have this authority to require sidewalks, and I feel that that's -- that's been laid out fairly clearly; and, again, the issue of nonconformance, where, again, the sidewalks are not a nonconforming feature, they're a noncompliant feature.

And also, another concern of the LUHO was that he didn't have the full record. There was miscommunication with counsel staff. The full record had been provided, but in two different places. So full record has been provided to the EPC. Should this go back to the LUHO, the full record will be available, as well.

I think it's also important to note that process-wise, what the EPC is tasked with is looking at those remand issues. This is not rehearing of the entire case, but a focus, again, on those -- those three issues that the LUHO has asked the EPC to address.

So staff does recommend the EPC reaffirm their original -- pardon me -- that they affirm their original decision and that they deny this appeal. And with that, I will stand for any questions

**CHAIRMAN SERRANO:** Thank you, Ms. Gould. I have one quick question before I go to the commissioners for any questions.

Now, I mean, Number 1, Number 2, I think are clear, but I want to go to the nonconforming issue.

In 2004, when a building permit was secured for -- for whatever purposes, I'm assuming to build something, and the sidewalk ordinance was in place, or the sidewalk was not put, which at that point we can play with noncompliant or nonconforming, who's responsible for the enforcement or the assurance that the sidewalk was to be built under that permit?

**MS. GOULD:** So, Mr. Chair, Commissioners, in 2004, building and safety staff or building permit staff probably should have done the site review and we should have discovered that that sidewalk should have been put in at that time.

However, the sidewalk ordinance is clear in the requirements for the sidewalk. So even if they didn't go in at that time, the city could city go back and require that sidewalk.

**CHAIRMAN SERRANO:** All right. But can one argue, such as the applicant, that the lack of A, catching that, or B, enforcing that at that particular time, allowed for the nonconformance to continue, in their mind?

**MS. GOULD:** Mr. Chair, Commissioners, the city procedure has been that if -- if a building permit was approved in error, it's -- it's void. So if -- even if we should have done something and we didn't do it, it -- it doesn't give us or the applicant a pass on those rules.

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**CHAIRMAN SERRANO:** Okay. Thank you. You've answered my question.

Commissioners, any questions of Ms. Gould, please.

**COMMISSIONER SHAFFER:** Commissioner Shaffer.

**CHAIRMAN SERRANO:** Commissioner Shaffer.

**COMMISSIONER SHAFFER:** Thank you, Chair.

Ms. Gould, thank you. I, actually, just want to make a statement as we go forward and hear the rest of this case. And I appreciate you reminding everybody that we are only hearing the three LUHO items and addressing those directly instead of rehearing the case in its entirety, since the entire case is already on record. So I appreciate that, and as vice chair, I just want to remind the rest of the commission that that's the task before us today.

**CHAIRMAN SERRANO:** Thank you, Commissioner Shaffer.

Commissioners, any other questions of Ms. Gould?

Okay. Thank you, Ms. Gould.

The applicant, please

**MR. CHAVEZ:** The reason that we are back here today is because --

**CHAIRMAN SERRANO:** Well, hold on. Hold on a second, sir. Identify yourself and then we'll swear you in.

**MR. CHAVEZ:** Yes, sir. The name is Richard G. Chavez. I reside at 906 15th Street, Northwest, Albuquerque, New Mexico.

(Witness sworn.)

**CHAIRMAN SERRANO:** Okay. Please proceed

**MR. CHAVEZ:** So the reason why we're back here today is pretty simple. What the hearing officer pointed out was some deficiencies in the staff, what they presented to DRB, what DRB presented to EPC, and what EPC presented to the hearing officer. Those were pretty blatant deficiencies going through this process.

For me, as an applicant and as a taxpayer, property owner, from the very start of this process, I've been extremely frustrated with the fact that there is no process set up for something that I have requested. And that's pretty evident because of the issues that the hearing officer brought up.

And so now I'm before you basically listening to staff give new or additional information they should have provided the first time around. And the -- the lack of -- of information, the lack of follow-up as far as official notes, minutes and so forth, is very -- it's very concerning on my part because the question becomes: What's this decision based on?

So now that the staff has had an opportunity to go back and correct those deficiencies, you know, I'm not really left with many options at this point in time.

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I do want to correct the record, though, that Ms. Gould stated when I first applied. My application went before planning on 8/30/2019. The first hearing I had was on 9/11/2019, where the DRB rejected my application. So I'm not sure where they're getting this July application, because that was not the case.

The fact is, is that in May, the -- the city council actually adopted an ordinance amending the current sidewalk ordinance, and staff failed to implement that until January.

You know, I've tried to do everything that has been asked of me within my ability, and every time I come before either the staff, DRB or EPC, there's something new that comes up that I have to address.

And so, you know, at this point in time, as a -- as a citizen, a property owner, taxpayer, I pay \$6,500 a year in taxes, what has that brought me as far as sidewalk? Zero.

And as the planning department, I was actually encouraged to hear Ms. Gould state that the planning department is going to be working with CIP development, the CIP group, to start looking at utilizing infrastructure dollars for sidewalk implementation.

Now, I know this is not part of the discussion, but I brought this up from the very beginning. And since Mrs. Gould did bring it up to the hearing officer, I think it's important that you, as the planning department and as the EPC, look at (inaudible) other than this whack-a-mole ordinance process. Because basically, you're waiting for people to show up to request a permit. You snag them, you drag them through the process, you make them pay for it, and that's -- that's a very piecemeal approach to the need of a \$400 million gap that the city's facing right now.

It could be addressed within ten years if you carved out \$40 million from the infrastructure program. It could be addressed in 20 years if you carved out \$20 million out of the infrastructure program. But the department has to -- to work with the CIP folks in the other city departments so that you're not putting me and you through this process.

This process is totally uncalled for. I realize what you're trying to do, and I totally agree with getting sidewalks installed. But why am I having to pay \$20,000 to install sidewalks for everybody and their brother to be able to walk free on that they don't have to pay?

So spread the cost around. Don't -- don't penalize property owners who are already paying an exorbitant amount in taxes and they're not getting anything for that.

Beyond that, you know, you folks are going to make the decision that you think is appropriate based on what staff recommended. I'm going to ask you to make a decision based on your conscience. Because what I have gone through with this staff, I'm looking at June 11th -- I started this process on 9/11. On October 30th, the -- the meetings stopped because they couldn't answer my question with regard to why they didn't introduce Chapter 12. I got to -- January 7th hearing proposed for the hearing officer that was postponed because staff did not address the changes that the council adopted back in May.

And now, here I am, June 11th, before you folks again because staff failed to do their job and everybody up and down the line in this process failed to do their job, including the EPC. Because at the time that my case was presented to you the first

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go-round, all these questions should have been asked.

The hearing officer basically did the job of the planning department, because the planning department didn't even bring up the issue of the nonconformity. And so, you know, I'm left with basically no confidence that I'm going to be treated in any way that isn't fair, reasonable to my position with regard to having to pay for a sidewalk, creating a (inaudible) that's going to be a legally liability for me. Because contrary to what staff said, there is no transition from pavement to dirt. You're looking at a two- to three-inch deviation that creates an immediate tripping hazard.

So now I'm facing legal liability the first time somebody plants their face on that sidewalk. And who is going to be sued? No, it's not -- well, the city will be sued, but it will be sued by me. Because after I get sued by the person who plants their face, I'm going to be suing the city basically with an I-told-you-so with this tripping hazard that you're creating for me.

I guess you can understand my frustration as a property tax owner and taxpayer. What -- what -- what concerns me now is that -- or not concerns me, but it actually is -- is a very positive, what I have come to learn, is that Councilor Benton has paid for an engineering study from 11th through 15th on Granite to bring all sidewalks into AC -- or ADA compliance.

Now, the (inaudible) is and what I've learned from this is that this is just his money out of his budget. There's no guarantee that CIP will pick up the project to fully fund it, but the fact that it's in the planning stages and it's moved to actually survey and engineering tells me that if somebody can get their act together in the city and develop a sidewalk infrastructure program, this will be one of the first areas addressed because all that preliminary engineering study has been completed.

So yes, there's no guarantee that this sidewalk is going to get put in there, but in time, I can see this happening because the city will not have any reason not to put sidewalk in. Because the bottom line is, if I'm going to get stuck with this bill of \$20,000 to put an island of sidewalk on my block that has no sidewalk on the entire block for both sides, then I may just have to wait it out and maybe just sell the whole property.

Because if I sell my whole property, then I don't have to go through this whole process and I can then basically lease my house back to myself as a means to try and circumvent this process. I do not want to do that, but you folks do not leave me any choice.

And, again, the reason why we're here is because staff, DRB and the EPC at the time they had the opportunity did not do their job. Thank you, folks.

**CHAIRMAN SERRANO:** Okay. Thank you, Mr. Chavez.

Commissioners, any questions?

No questions from the commission. I will go -- Mr. Salas, do we have anyone signed up from the public on this?

**MR. SALAS:** If anybody wishes to speak, please raise your virtual hand.

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**MR. BRITO:** Mr. Chair, this is an appeal --

**CHAIRMAN SERRANO:** Oh, that's right.

**MR. BRITO:** -- so the general public --

**CHAIRMAN SERRANO:** That's right. I'm sorry. That's right. Okay. We'll proceed -- staff.

**MS. GOULD:** Mr. Chair, Commissioners, I don't have anything further to add. But we do have Shahab Biazar, who is our city engineer, if there are technical questions that the board wishes to ask.

**CHAIRMAN SERRANO:** All right. Thank you.

Applicant, anything to close

**MR. CHAVEZ:** No, sir. I'm just -- you know, I leave it in your hands. This is a big issue. It's bigger than me. I -- according to city engineers, this issue's come up with a lot of people, a lot of people are having the problem. And if the city is going to take this whack-a-mole approach, it's never going to get the sidewalks accomplished throughout the city. Without a real infrastructure capital improvement program for sidewalks, this whack-a-mole process that this ordinance has developed is going to have me and other people like me coming back to you because it does not address the areas of the city like Martineztown, Barelmas, East San Jose, San Jose, Old Town, because there's no -- there -- there -- there's no flexibility in this -- in this situation.

I gave you three symptoms of bureaucratic calcification. The last system that I did not bring in there -- or symptom, I should say, is accountability. Who is going to be held accountable for the -- the fact that this was not presented in a professional or complete manner? There's no accountability up and down the line for having put me through almost ten months of waiting on a decision that could have simply been addressed administratively by simply asking the question: Will this complete sidewalk system on the block, not the area, but on the block? And that answer would have been no.

Thank you, sir.

**CHAIRMAN SERRANO:** Thank you, Mr. Chavez.

Commissioners.

**COMMISSIONER SHAFFER:** Chair, Commissioner Shaffer.

**CHAIRMAN SERRANO:** Commissioner Shaffer, please.

**COMMISSIONER SHAFFER:** Thank you.

Thank you, Mr. Chavez, for your impassioned plea on this. It's -- it's -- it's obvious that there's frustration there. And as we discussed in the first hearing, we are -- we understand. We understand what we're -- what you're talking about. We understand the -- the confusion here, and we understand that this -- in your eyes.

And if you look at an overview of the area and the neighborhood, that if you specifically look at this area, it would indeed create an island, and that was something that we discussed in

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depth.

I have a question for Mr. Shahab in -- of the plans -- I know Ms. -- in the appeal, Mr. Chavez had listed in several instances the surveying companies that had been up and down Granite looking at areas, marking stuff out, assuming that they're just kind of as-built'ing I'm assuming what's happened in the neighborhood over the years and coming up with a master plan for ADA compliance. So I have that question of Mr. Shahab, if that's the case, of what the survey crews were doing.

And the second question I have for you, assuming that it's the typical ADA compliance documentation that's happened throughout other neighborhood in the -- across the City of Albuquerque, they wouldn't be necessarily installing complete sidewalks from corner to corner of each street. What they would be doing is addressing the ADA compliance issues that are at corners, specifically just so there was the -- an ADA ramp going left and right on each corner and kind of documenting that.

But if you could clarify possibly, just -- just bringing it up. And I want to get on record Mr. Chavez's concern about the -- what he's seen in the neighborhood to date in terms of surveyors and what the plan was. Thank you.

**CHAIRMAN SERRANO:** Excuse me. Let's start off by swearing you in, please. Raise your right hand, state your name and address and I'll swear you in.

**MR. BIAZAR:** This is Shahab Biazar, city engineer.  
600 2nd Street, Northwest, Albuquerque, New Mexico, 87102.

(Witness sworn.)

**CHAIRMAN SERRANO:** Okay. If you could answer the two --

**COMMISSIONER SHAFFER:** And I want to clarify. I -- I apologize, Shahab. I know you by first name, and I apologize by calling Mr. Shahab. I apologize for using your first name.

**MR. BIAZAR:** That's okay, Commissioner Shaffer.

Commissioners, if you could repeat your question number one. I apologize, my system broke up and I couldn't hear you. If you could repeat the question, please, I appreciate it.

**COMMISSIONER SHAFFER:** Certainly, Mr. Biazar. The first question, basically, was just confirming that the survey crews that have been out, that Mr. -- that the applicant has noted in the neighborhood up and down Granite, if they were out there just as-built'ing kind of what's been done over the years, coming up with a master plan of the neighborhood, of what needs to happen. Because I know that that takes some time documenting what's there, what's the plan and what are costs.

And then the second one the, if the neighborhood -- as we've seen in other neighborhoods being brought up to ADA compliance, wouldn't it only be at the corners, tying into existing, or, as we've seen in other areas, dead-end'ing as you would see for future reference.

**MR. BIAZAR:** This is Shahab Biazar, Commissioner Shaffer, Commissioners.

This is a CIP project, so we just recently found out that they are working on this. And we started asking questions from the

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DMD group that if that was the case. I don't know the details about what's happening, but typically, they -- they do come out there and survey the area or they look at the area and they -- they look at the -- what is lacking in the area. And it could be just sidewalk or it could be ramps that are not to ADA.

But there's also a -- a Complete Streets Ordinance that the council has adopted a few years back that once the DMD looks at the projects, they try to bring the roads to the compliance and add what's needed.

I mean, like I said, it's sidewalks, it's ramps that are not ADA compliance. It could be bike lanes that need to be added. So they look at all of those items and they bring to -- they try to bring the roadway to full compliance when feasible.

Like I said, there's a lot of times that there's not adequate right-of-way. So they just look at all those items, and not just ramps or sidewalks. They look at all the items that could be added or improved.

I don't know if that answered your question, sir.

**COMMISSIONER SHAFFER:** Chair, can I follow up with another question, please?

**CHAIRMAN SERRANO:** Go ahead, Commissioner.

**COMMISSIONER SHAFFER:** Thank you, Chair.

That does somewhat. I mean, it's a very generic overview. I guess I have a secondary question. If applicant was seeing survey crews up and down Granite, I don't know what the arterials are for this area. Do you have a -- do you know how Granite is designated versus, let's say, 14th and 15th, within the neighborhood feeder streets, what the roadway configuration and designations are?

And the follow-up to that would be, if there -- would the assumption be that the CIP program was focusing on Granite, Mountain, Marble, the east-to-west roads versus the ancillary roads, 14th, 15th, 16th?

**MR. BIAZAR:** I believe Granite -- I don't have it in front me of, but I think it's a local street.

But I'm not sure how the DMD decides how they look at the area, especially in this case. It's driven by Commissioner -- I mean, by council. So, I mean, sometimes they just look at a certain area.

DMD generally looks at the major local streets and above, and I think that's how they decide how to -- they want to improve the roadway and sidewalks, because it's -- it's the area that is mostly used by public.

**COMMISSIONER SHAFFER:** Okay. Thank you.

**CHAIRMAN SERRANO:** Okay. Thank you, Commissioner Shaffer.

Commissioners, any other questions?

**COMMISSIONER HOLLINGER:** Mr. Chair, Commissioner Hollinger.

**CHAIRMAN SERRANO:** Commissioner Hollinger, please.

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**COMMISSIONER HOLLINGER:** Thank you, Chair.

So I believe this question would be directed towards staff, or possibly Mr. Biazar.

My question is, if a variance is granted, does that set a precedence for all future development on this property, and if so, what does that mean for future sidewalk development?

**CHAIRMAN SERRANO:** Staff, please.

**MS. GOULD:** Mr. Chair, Commissioner Hollinger, so if a variance is granted, that variance stays with the land for -- for its duration. And in this case, if the variance were granted, then it would mean that the city could put in sidewalks at a later date, or if the property was sold, the next individual could put in sidewalks at a later date, if they chose. But it would basically exempt that -- that chunk of property from having to -- that property owner from having to supply sidewalks.

And if -- and in addition, to sort of clarify Commissioner Shaffer's question earlier, my understanding from speaking to our -- one of our traffic engineers (inaudible) got yesterday is the -- the project that we're looking at is, I believe, from 7th to 15th, and it's -- at this point, there's only money for design.

**COMMISSIONER HOLLINGER:** Thank you. That answers my question.

**CHAIRMAN SERRANO:** Thank you, Commissioner.

Commissioners, any other questions? Okay. Thank you.

Commissioners, we will -- we will go to -- I'll either entertain a motion, or we will go to further discussion, if there's any by commissioners.

**COMMISSIONER SHAFFER:** Chair, Commissioner Shaffer.

**CHAIRMAN SERRANO:** Commissioner Shaffer, please.

**COMMISSIONER SHAFFER:** Thank you, Chair. I -- you know, we -- we went over this pretty thoroughly back in the original hearing that we had, and we brought up several questions to staff. We brought up several questions of the applicant. We -- we understood.

And I want to reiterate that I think we had discussed the applicant's concern about the trip hazards that he's anticipating having. And we had discussed with -- the fact that you could actually, at the alleyway, where the sidewalk ties in, you can actually slope the concrete down. You dig it out and slope the concrete down, and you have a transition point there, and the same thing at the other end, and -- and be able to comply with the correct transitions and not have a trip hazard. So I wanted to address that.

But going -- going back to the LUHO's directions to us, Item Number 1, I don't believe -- he -- LUHO wanted us to substantiate further the -- the items brought before us. I'm not sure it's incumbent upon us to actually repeat the staff findings one by one and put them on record. I don't think that that's what's required of us whatsoever.

We specifically cited the staff findings and we specifically cited that we agreed with the staff findings and that they were

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complete. So I don't believe that we need to go back through and again -- I think Number 1 is clear that we've met that.

I also believe that Number 2 has been justified through Number 1, because staff is citing the IDO requirements, the sidewalk ordinance, as well.

And I think we've also addressed Number 3, nonconformance. It's actually not nonconformance, it was noncompliant, because it should have been brought up to code when the permit was pulled in 2004. So it's like anything else, in my opinion, that we -- when you touch it, you bring it up to code, and that's what we discussed in the prior hear, as well.

And that's -- it does create things. But it's -- as each person does bring things up to current codes, then you tie in an infrastructure that is complete. Every single time something gets touched, it gets brought up to current code, and then you've got a code compliant system put together.

So my opinion, and I would support a motion, would be that we uphold our original decision as -- as we stated.

**CHAIRMAN SERRANO:** Thank you, Commissioner.

Any other commissioners?

Commissioner Shaffer, are you prepared to make a motion?

**COMMISSIONER SHAFFER:** Sorry. I was working two different mice here. I'm on my computer and my laptop.

I am.

**CHAIRMAN SERRANO:** Please proceed.

**COMMISSIONER SHAFFER:** Hold on. I'm on the original -- give me one second. I apologize. Okay. I cannot pull up -- okay. There's the -- I see it on Mr. Brito's screen there.

So it was Findings 1 through 16; is that correct?

**CHAIRMAN SERRANO:** Correct.

**COMMISSIONER SHAFFER:** Thank you. For some reason, my -- I'm on the old agenda.

In the matter of Agenda Item Number 1, Project AC-20-6, PR 2019-002811, I move that we affirm our original decision based upon staff report and Findings Number 1 through 16.

**COMMISSIONER STETSON:** Second from Commissioner Stetson.

**CHAIRMAN SERRANO:** It's been moved by Commissioner Shaffer, seconded by Commissioner Stetson to affirm the denial of the appeal on Project Number 2019-002811, Agenda Item Number 1, Commissioners -- and based on Findings 1 through 16.

Commissioners, any discussion further?

None. We'll take a roll call vote.

Commissioner Shaffer.

**COMMISSIONER SHAFFER:** Commissioner Shaffer, aye.

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**CHAIRMAN SERRANO:** Commissioner Shaffer, aye.

Commissioner Cruz.

**COMMISSIONER CRUZ:** Aye.

**CHAIRMAN SERRANO:** Commissioner Cruz, aye.

Commissioner Hollinger.

**COMMISSIONER HOLLINGER:** Commissioner Hollinger, aye.

**CHAIRMAN SERRANO:** Commissioner Hollinger, aye.

Commissioner Stetson.

**COMMISSIONER STETSON:** Commissioner Stetson, aye.

**CHAIRMAN SERRANO:** Commissioner Stetson, aye.

Commissioner MacEachen.

**COMMISSIONER MACEACHEN:** Commissioner MacEachen, aye.

**CHAIRMAN SERRANO:** Commissioner MacEachen, aye.

Chair votes aye.

The appeal is denied and we reaffirm the original EPC decision on the unanimous vote.

Thank you, Commissioners. Thank you, staff. Thank you, applicant for participating.

(Conclusion of Agenda Item No. 1.)

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RE: CITY OF ALBUQUERQUE EPC MEETING MINUTES OF  
JUNE 11, 2020, ITEM NO. 1

TRANSCRIPTIONIST'S AFFIRMATION

I HEREBY STATE AND AFFIRM that the foregoing is a correct transcript of an audio recording provided to me and that the transcription contains only the material audible to me from the recording and was transcribed by me to the best of my ability.

IT IS ALSO STATED AND AFFIRMED that I am neither employed by nor related to any of the parties involved in this matter other than being compensated to transcribe said recording and that I have no personal interest in the final disposition of this matter.

IT IS ALSO STATED AND AFFIRMED that my electronic signature hereto does not constitute a certification of this transcript but simply an acknowledgement that I am the person who transcribed said recording.

DATED this 29th day of July 2020.

*Kelli A. Gallegos*

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Kelli A. Gallegos

***Planning Department***  
***Brennon Williams, Interim Planning Director***

***Development Review Division***

600 2<sup>nd</sup> Street NW – 3<sup>rd</sup> Floor  
Albuquerque, NM 87102

**NOTICE OF APPEAL**

June 29, 2020

**TO WHOM IT MAY CONCERN:**

The Planning Department received an appeal on June 26, 2020. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

***Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.***

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

**CITY COUNCIL APPEAL NUMBER: AC-20-8**

**PLANNING DEPARTMENT CASE FILE NUMBER:**

**PR-2019-002811, SI-2019-00158, VA-2019-00288, VA-2019-00416, VA-2020-00070  
VA-2020-00191**

**APPLICANT: Richard Chavez**  
**906 15<sup>th</sup> Street NW**  
**Albuquerque NM, 87104**

cc: Crystal Ortega, City Council, City county bldg. 9<sup>th</sup> floor  
Kevin Morrow/Legal Department, City Hall, 4<sup>th</sup> Floor-  
DRB File  
EPC File



**ENVIRONMENTAL PLANNING COMMISSION  
ACTION SUMMARY**

**Thursday, June 11, 2020  
8:40 a.m.**

**Due to COVID-19 this meeting is a Public Zoom Video Conference  
Members of the public may attend via the web at this address: <https://cabq.zoom.us/j/94879450196>  
or by calling the following number: 1 301 715 8592 and entering Meeting ID: 948 7945 0196  
or by calling the following number: 1 301 715 8592 and entering Meeting ID: 993 370 335**

**COMMISSIONER MEMBERS PRESENT:** Dan Serrano, Chair  
David Shaffer, Vice Chair  
Jonathan R. Hollinger  
Robert Stetson  
Joseph Cruz  
Tim MacEachen

**COMMISSIONER MEMBERS ABSENT:** Gary L. Eyster, P.E. (Ret.)  
Richard Meadows

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**EPC Action Summary 11 June 2020**

**Call to Order: 8:43 a.m.**

- A. Pledge of Allegiance
- B. Roll Call of Planning Commissioners
- C. Suspension of the Rules per C.8 of the EPC Rules of Conduct

**A motion was made by Commissioner MacEachen and Seconded by Commissioner Shaffer that this matter be approved. The motion carried by the following vote:**

**For 6: – Serrano, Shaffer, Stetson, MacEachen, Cruz, & Hollinger**

- D. Zoom Overview
- E. Announcement of Changes and/or Additions to the Agenda
- F. Approval of Amended Agenda
- G. Swearing in of City Staff

**1. Project #2019-002811**

AC-20-6 Remand from the LUHO to the EPC (originally VA-2019-00288 – VARIANCE and AC-19-18 Appeal of Denial of DPM Variance by the Development Review Board)

Richard Chavez appeals the DRB’s denial of a request for a DPM sidewalk variance for all or a portion of Lots 7-10 Block 44 Perea Addition, zoned R-1A, located at NEC of 15<sup>th</sup> St. NW and Granite Ave. NW, containing approximately 0.32 acre. (J-13)  
Staff Planner: Maggie Gould

**A motion was made by Commissioner Shaffer and Seconded by Commissioner Stetson that matter PR-2019-002811 AC-20-6 be Denied, based on the following findings. The motion carried by the following vote:**

**For 6: – Serrano, Shaffer, Stetson, MacEachen, Cruz, & Hollinger**

**2. Project #2018-001681**

RZ-2020-00009 Zone Map Amendment (Zone Change)

Modulus Architects Inc., agent for Two Rivers LLC, requests the above action for all or a portion of Lot 52 block 0000 Unit 2 of Atrisco Grant, located on Sunset Gardens Rd. SW, between 82<sup>nd</sup> St. SW and 86<sup>th</sup> St. SW, approximately 6.04 acres (L-09-Z )  
Staff Planner: Leslie Naji

**A motion was made by Commissioner Hollinger and Seconded by Commissioner Shaffer that matter PR-2018-001681 RZ-2020-00009 be approved, based on the following findings. The motion carried by the following vote:**

**For 6: – Serrano, Shaffer, Stetson, MacEachen, Cruz, & Hollinger**

**3. Project #2020-003461**

SI-2020-00052 — Site Plan-EPC  
Major Amendment to Prior Approval

Tierra West LLC, agent for Mesa View United Methodist Church, requests the above action for Tracts 27A-1 and 27A-2 of Taylor Ranch, Redivision of Tract 27A into Tracts 27-A-1 and 27-A-2 of the plat of Tracts 27-A, S-1, S-2, and S-3 Taylor Ranch, situated within Sections 23, 25 and 26 T11N R2E, Block 0000, zoned MX-L and located at the northeastern corner of the intersection of Montaña Road NW and Taylor Ranch Road NW (4701 Montaña Road NW), approximately 8.1 acres (E-11-Z and E-12-Z) Staff Planner: Catalina Lehner

**A motion was made by Commissioner Hollinger and Seconded by Commissioner Shaffer that matter PR-2020-003461 SI-2020-00052 be approved, based on the following findings. The motion carried by the following vote:**

**For 6: – Serrano, Shaffer, Stetson, MacEachen, Cruz, & Hollinger**

**3. OTHER MATTERS:**

- a. Approval of May 21, 2020 Action Summary Minutes

**A motion was made by Commissioner MacEachen and Seconded by Commissioner Hollinger that this matter be approved. The motion carried by the following vote:**

**For 6: – Serrano, Shaffer, Stetson, MacEachen, Cruz, & Hollinger**

**4. ADJOURNMENT 11:27 a.m.**



**ENVIRONMENTAL PLANNING COMMISSION  
AGENDA**

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8:40 a.m.**

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**MEMBERS**

**Dan Serrano, Chair  
David Shaffer, Vice Chair**

**Joseph Cruz  
Richard Meadows  
Johnathan R. Hollinger**

**Gary L. Eyster P.E. (Ret.)  
Robert Stetson  
Tim MacEachen**

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**NOTE: A LUNCH BREAK AND/OR DINNER BREAK WILL BE ANNOUNCED AS NECESSARY**

Agenda items will be heard in the order specified unless changes are approved by the EPC at the beginning of the hearing; deferral and withdrawal requests (by applicants) are also reviewed at the beginning of the hearing. Applications deferred from a previous hearing are normally scheduled at the end of the agenda.

There is no set time for cases to be heard. Please be prepared to provide brief and concise testimony to the Commission if you intend to speak. **In the interest of time, presentation times are limited as follows, unless otherwise granted by the Commission Chair: Staff – 5 minutes; Applicant – 10 minutes; Public speakers – 2 minutes each. An authorized representative of a recognized neighborhood association or other organization may be granted additional time if requested. Applicants and members of the public with legal standing have a right to cross-examine other persons speaking per Rule B.13 of the EPC Rules of Conduct.**

All written materials – including petitions, legal analysis and other documents – should ordinarily be submitted at least 10 days prior to the public hearing, ensuring presentation at the EPC Study Session. The EPC strongly discourages submission of written material at the public hearing. Except in extraordinary circumstances, the EPC will not consider written materials submitted at the hearing. In the event the EPC believes that newly submitted material may influence its final decision, the application may be deferred to a subsequent hearing. Cross-examination of speakers is possible per EPC Rules of Conduct.

**NOTE: ANY AGENDA ITEMS NOT HEARD BY 8:30 P.M. MAY BE DEFERRED TO ANOTHER HEARING DATE AS DETERMINED BY THE PLANNING COMMISSION.**

**Call to Order:**

- A. Pledge of Allegiance
- B. Roll Call of Planning Commissioners
- C. Suspension of the Rules per C.8 of the EPC Rules of Conduct
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**3. OTHER MATTERS:**

- a. Approval of May 21, 2020 Action Summary Minutes

**4. ADJOURNMENT**

**BEFORE THE CITY OF ALBUQUERQUE  
LAND USE HEARING OFFICER**

**APPEAL NO. AC-20-6**

**Project PR-2019-002811; SD-2019-00158; VA-2019-00288**

**RICHARD CHAVEZ, Appellant,**

1           This is an appeal from a decision of the Environmental Planning Commission (EPC) in  
2           which the EPC denied an appeal and upheld a decision of the Development Review Board  
3           (DRB) regarding a sidewalk variance/ and or waiver. This appeal originated at the DRB with  
4           the Appellant’s application to consolidate four lots into two lots to conform his land to how  
5           it developed. Because the four lots lack sidewalks affronting the City streets, the DRB  
6           required that the Appellant install sidewalks before it would approve the lot consolidation.  
7           Appellant appealed the DRB’s decision regarding sidewalks. The appeal made its way to  
8           the EPC.

9           Briefly, the record shows that Appellant’s four lots have two houses on them.  
10          Apparently for refinancing, Appellant desires to create one lot for each home [See Map at R.  
11          34A]. The evidence further shows that one of the homes was constructed before 1947  
12          (purchased by Appellant’s parents), and Appellant constructed the second home in 2004 [R.  
13          52A]. The two homes are located at the northeast corner of Granite Ave. and 15th Street,  
14          NW.

15          Apparently, when Appellant applied for the lot consolidation, he was told by City  
16          Planning Staff that because there are no sidewalks on his lands affronting Granite Ave. and

17 15<sup>th</sup> Street, Appellant must install sidewalks before the City could approve the lot  
18 consolidation. Appellant then applied for a variance for the width of the sidewalk and he also  
19 applied for a waiver from having to install sidewalks [R. 11A]. After deferrals, in a public  
20 meeting on October 30, 2019, the DRB denied the application for the variance and for the  
21 waiver. However, there is no record of the DRB processes included in this appeal record.  
22 Appellant filed a timely appeal to the City Council [R. 2A]. A remote Land Use Appeal  
23 hearing was held on April 30, 2020.

24 The record of this appeal is lacking. This record does not include evidence of the DRB’s  
25 decision making, the minutes of its public meetings, or its decision(s) on the Appellant’s  
26 application. I note for the Planning Director that under the IDO, § 6-4(U)(3)(d), “the  
27 Planning Director shall prepare and transmit a record of the appeal together with all appeal  
28 material received...” This record that was transmitted to the City Council is inadequate and  
29 incomplete.

30 In addition, in reviewing the record that is available, although the EPC held an appeal  
31 hearing on Appellant’s appeal, I am unable to determine whether the EPC erred because the  
32 EPC made no findings. Pursuant to IDO § 6-4(U)(3)(c)4 of the IDO, when the EPC sits as  
33 an appellate body, it “shall make findings exclusively on the record.<sup>1</sup> As indicated above,  
34 although the EPC sat as an appellate body in this matter, it failed to make any substantive  
35 findings in its Official Notification of Decision [ R. 3A]. The only finding that the EPC made  
36 in this appeal is a conclusion that it “voted to deny the appeal” [R. 3A]. Further, when the  
37 EPC performs appellate review hearings, its’ decision “*shall*” be based on whether the DRB

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1. Although this section may seem to relate to only to one specific type of appeal, when reading this section and § 6-4(U)(4) together, it is applicable in this appeal.

38 (decision-making body) satisfied the three criteria of § 6-4(U)(4). (Emphasis added).  
39 Without any substantive findings from the EPC other than its denial of the appeal, I find that  
40 the EPC’s decision is deficient. The IDO requires that the EPC support its decision on  
41 substantive findings on the record. This matter will have to be reheard by the EPC so that it  
42 can do what is required under the IDO.

43 In doing so, I expressly instruct the EPC to address, among the other issues in this  
44 appeal, the threshold question Appellant raised in his appeal---whether or not the DRB can  
45 require sidewalks under the facts and circumstances in this matter. I view the threshold  
46 question raised by Appellant as involving the question whether the lack of sidewalks on a  
47 fully developed site is a “non-conforming site feature” under the IDO. Thus, the EPC must  
48 also determine if the condition of the subject site (a developed site without sidewalks) is (or  
49 is not) an existing non-conforming site feature under the IDO. If the EPC concludes that  
50 the lack of sidewalks is a non-conforming site feature as contemplated by the IDO, the EPC  
51 must also decide whether the lot consolidation is (or is not) an expansion of the  
52 nonconforming site feature under the IDO.

53   
Steven M. Chavez, Esq.  
Land Use Hearing Officer

May 8, 2020

Copies to:

Appellant  
City Council  
City Staff