



***Environmental  
Planning  
Commission***

***Agenda Number: 1  
Project #: 2019-002018  
VA-2019-00288  
Hearing Date: February 13, 2019***

***Staff Report***

<b><i>Agent</i></b>	Richard Chavez
<b><i>Applicant</i></b>	Richard Chavez
<b><i>Request</i></b>	<b>Appeal of the DRB's denial of a Sidewalk Variance</b>
<b><i>Legal Description</i></b>	All or a portion of Lots 7-10, Block 44 Perea addition
<b><i>Location</i></b>	NEC or 15 <sup>th</sup> St and Granite Ave., NW
<b><i>Size</i></b>	0.32 acres
<b><i>Existing Zoning</i></b>	R-1A

The DRB denied the request for a Sidewalk Variance per the DPM. The applicant appealed the denial. The review body is the EPC per the DPM.

***Staff Planner***

***Jolene Wolfley, DRB Chair***

***Summary of Analysis***

The IDO requires a perimeter sidewalk be installed for all properties. The Design Process Manual (DPM), Chapter 12 identifies the criteria to consider a variance of this requirement. The DRB denied the request for a variance because the request did not meet the decision criteria. In fact, the installation of a sidewalk would contribute to the public welfare (it would further pedestrian safety and ADA compliance). The applicant appealed the DRB decision. DPM Chapter 12 identifies the EPC as the appeal body for a sidewalk variance.

The DRB did not act fraudulently, arbitrarily, or capriciously. The decision was adequately supported with substantial evidence in the form of Findings listed in the Official Notice of Decision. The DRB acted within its authority in applying applicable requirements.





Mayor Timothy M. Keller

# CITY OF ALBUQUERQUE

## Planning Department

### INTER-OFFICE MEMORANDUM

February 6, 2020

**TO:** Dan Serrano, Chairman, Environmental Planning Commission

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

**SUBJECT:** AC-19-18, Project PR-2019-002811 SD-2019-00158 VA-2019-00288: Richard Chavez, appeals the decision of the Development Review Board (DRB) to deny a variance 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

An application for a Preliminary/Final Plat and a Sidewalk Variance was filed by the applicant on August 30, 2019. The application was accepted and scheduled for the DRB meeting on September 11, 2019. The applicant received DRB comments and the case was reviewed with an indication that additional materials were needed. The DRB reviewed the case at four (4) separate meetings, with the last meeting on October 30, 2019. At that meeting, the DRB denied the request for the Sidewalk Variance because it was determined that the applicant did not meet the applicable criteria per the Development Process Manual (DPM), Chapter 12, Step 2. The DRB found that a variance to the sidewalk installation requirement would not promote the public welfare. The subject site is in a highly-pedestrian and urban area and the lack of a sidewalk around the perimeter of the site is a gap in the sidewalk system that makes it more difficult to have good pedestrian connectivity throughout the neighborhood. The vast majority of parcels in the area have a sidewalk.

The applicant appealed this decision on November 12, 2019; the appeal was filed in a timely manner. The current, in effect, DPM states that, "The decision of the Development Review Board is final unless appealed to the EPC within fifteen (15) days." (ref. DPM, Chapter 12, Sidewalk Variance procedure, Step 2). This appeal to the EPC is based on the current DPM standards which are pre-IDO. There has been an update to this process within the DPM, but that update is pending final approval from the CAO.

## HISTORY

The applicant met with staff prior to their submittal to discuss the requirements for the proposed variance. The applicant was told that he could request a sidewalk variance, but it was unlikely to be granted because of the location of the property in the center of the city.

An application for a Preliminary/Final Plat and a Sidewalk Variance was filed by the applicant on August 30, 2019. The application was accepted and scheduled for the DRB's meeting on September 11, 2019.

The Planning Staff provided comments to the applicant regarding missing notes on the plat, the lack of a surveyor's signature, and the lack of an exhibit showing existing sidewalks. Comments provided by the Code Enforcement Division indicated that a sidewalk should be provided, and comments provided by Transportation stated that the sidewalk variance should not be granted and noted that the existing fencing for the subject property is located within the public right-of-way.

The case was deferred to the meeting on September 25, 2019 to allow the applicant opportunity to address DRB comments, and the applicant requested a deferral to the October 2, 2019 meeting to allow additional time to address the provided comments. The case was heard on October 2<sup>nd</sup> and again on October 23, 2019. However, after extensive discussion, the case was again deferred to address comments from Transportation regarding the sidewalk variance, to allow the applicant to submit a clear site exhibit, and to properly address the fencing located within the public right -of-way. At the October 30, 2019 meeting, the DRB heard additional testimony from the applicant and the Transportation DRB member, but ultimately voted to deny the variance request based on the IDO requirement for a sidewalk to be provided in residential areas and the fact that there are existing sidewalks in the area that could eventually connect to the required sidewalk. It was also noted that the required sidewalk would increase and improve pedestrian and ADA access in the area.

On November 12, 2019, the applicant appealed the DRB's decision to deny the request. When staff processed the appeal, it was inadvertently scheduled for hearing with the Land Use Hearing Officer (LUHO), as the LUHO is generally the appeal body for DRB cases. However, prior to the hearing with the LUHO, staff realized the changes made by R-19-150 (*see explanation below*) which requires that an appeal of a Sidewalk Variance be heard by the Environmental Planning Commission (EPC) under the DPM, not the IDO. At the LUHO hearing held on January 7, 2020, Legal Department staff presented the jurisdictional problem and the LUHO recommended to City Council that the appeal be correctly reassigned to the EPC. At its January 22, 2020 meeting, the City Council referred the appeal to the EPC. While the LUHO scheduling was made in error, the case was reviewed under the appropriate criteria.

In May 2019, the City Council adopted R-19-150, "Interim Procedures for the Development Review Board until the First Annual Update of the Integrated Development Ordinance has been completed." The legislation is highly detailed. On page 4 of "Exhibit A, Item Page 406, Section 6-6(L) states, "Delete subsection 6-6(L)(3)(b) Sidewalk Variance, as this procedure is covered by the DPM." DRB Board members were unaware that R-19-150 had deleted the Sidewalk Variance process within the IDO. Nonetheless, the DRB Transportation engineer evaluated the request using both the IDO and the DPM decision criteria and their comment outcomes are the same. Decision criteria is similar between the previous provision that was in the IDO and the current DPM.<sup>1</sup>

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<sup>1</sup> The Annual Update of the IDO has an amendment that makes the review of a sidewalk installation a "sidewalk waiver" and restores the review criteria that was originally in the IDO before the May 2019 Interim Procedure. The IDO Annual Update would make the DRB decision on a sidewalk 'waiver' appealable to the LUHO. The EPC would then no longer be involved. The Annual Update of the IDO is pending before the City Council.



## APPEAL

**The appellant cites the following as reasons for the appeal (shown in bold text).** Staff's response to the appellant's arguments follow (shown in regular text). The full list of the appellant's arguments is contained in the appellant's application dated November 12, 2019 (included in the Record).

**1. Appellant: The DRB's decision was arbitrary and ignored the existing sidewalk gaps in the area and the character of sidewalks in the area.**

Staff Response: The applicant's request was treated in the same manner as similar requests. Historically, the DRB has required perimeter sidewalks for similar platting actions. Section 14-16-5-3(D)(1)(a) of the IDO requires a perimeter sidewalk for residential property. Because the applicant is making a change to their property, the requirements of the IDO apply (See Section 1-7(A)(1)).

The DRB denied the variance of the IDO requirement for a perimeter sidewalk because the request did not meet all of the applicable criteria for a Sidewalk Variance in Chapter 12(A)(1-9) of the DPM. Approval of the request would perpetuate a gap in the sidewalk system where there are existing sidewalks to the east and south of the site. Gaps in the sidewalk system are contrary to public safety and welfare, and the area has a high degree of pedestrian activity and the sidewalk would contribute to a safe pedestrian environment, especially for pedestrians with disabilities.

The DRB members informed the applicant that an alternative approach would be to request a variance to the width of the sidewalk from the 4-foot wide requirement to match existing sidewalks in the area. The variance to the width requirement is also covered in the current DPM, Chapter 12. However, the applicant did not request a variance to the width of the sidewalk.

The neighborhood has many existing sidewalks in a mixed pattern, so building additional sidewalk promotes the public welfare. In contrast, there are other areas of the City where there are no sidewalks at all. The sidewalk variances granted by the DRB have been in areas where there are no existing sidewalks. While the applicant's property may not completely connect to a sidewalk now, more sidewalks can be installed as the area redevelops and creates a full network of sidewalks.

**2. Appellant: There is no incentive for any neighboring property to install sidewalks.**

Staff Response: If any of the neighboring properties redevelop, the same requirements will apply to the other area properties that were applied to the applicant's property. The City requires compliance with existing rules for new development (IDO Section 1-7(A)(1)).

**3. Appellant: Fencing in the right-of-way requires a revocable permit. The existing curb and gutter were built in 1966 and the fencing is "grandfathered" in.**

Staff Response: As stated above, the applicant is making a change to the site and, therefore, the current requirements of the IDO and other City standards are applicable to the property. The revocable permit is required for any encroachment into the right-of-way. The other option available to the owner is to remove the encroaching fence altogether.

**4. Appellant: The City should update the sidewalks using City funds or create a special**




**assessment district as was done along Mountain Road and Lomas.**

Staff Response: The City Council creates a Capital Improvement Program (CIP) to allocate funding for improvements. This process is outside the purview of the DRB, which is charged with implementing the DPM and IDO in situations like this.

## **CONCLUSION**

The Applicant's request did not show it meets the Criteria for a Sidewalk Variance per the DPM, Chapter 12, and the DRB denied the proposed variance. In the appeal, the appellant has not offered evidence that contradicts the findings or action of the DRB. The DRB did not act fraudulently, arbitrarily, or capriciously, and the decision was adequately supported with substantial evidence in the form of Findings listed in the Official Notice of Decision. Consequently, the DRB acted within its authority in applying the applicable requirements.



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Jolene Wolfley, Chair  
Development Review Board  
Planning Department

### **Attachments:**

1. Sidewalk Variance criteria from DPM, Chapter 12
2. Comparison of Sidewalk Variance Criteria from DPM to criteria formerly in the IDO.
3. Map of existing sidewalks in the vicinity of 15<sup>th</sup> & Granite



## Chapter 12 SIDEWALK VARIANCE

### INTRODUCTION

The 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 or unless such facilities were constructed under differing standards previously in force." In addition, sidewalk design must be in accordance with the criteria presented in Chapter 23, Volume 2 of the Development Process Manual. General sidewalk design criteria promotes mobility, safety and comfort of the pedestrian and allows adequate pedestrian access to abutting property.

While the City encourages compliance with the standards and design criteria, there are certain circumstances under which a variance from the standards and design criteria is appropriate. The sidewalk variance procedure was established to provide for possible departure from normal standards under specific circumstances and to protect unique characteristics of certain neighborhoods.

Any property owner who wishes to install a sidewalk which does not conform to the standards in the Sidewalk Ordinance or the design criteria in the DPM, Chapter 23, Volume 2 must apply for a variance. The single exception is use of material other than standard material as described in Chapter 23, Volume 2. In this case only the review and signatures of the City Engineer and Traffic Engineer are required.

Variance applications are evaluated based on the following criteria set forth in the Sidewalk Ordinance:

"A. The Mayor, upon application of the owners or upon institution of an improvement district, may give a variance from any requirements of this ordinance, if it is found that:

1. The area is one which is subject to site development plan review as a planned unit development as provided in the Zoning Code, Article 7-14 R.O.A. 1994) , or
2. The area is one in which, because of special functional conditions, it is desirable to maintain or develop a design plan not consistent with uniform sidewalk installation as set forth in Section 14 of the Sidewalk Ordinance, or
3. The area or site has been recognized as having historical, archeological, and/or architectural significance by the City of Albuquerque, the State of New Mexico, or the United States of America and in order to maintain such historical, archeological, and/or architectural significance a variance is appropriate, or
4. The area is of low intensity land use to an extent that the normal installation of sidewalks will not contribute to the public welfare, or
5. The City's right-of-way is insufficient in width to permit the construction of a sidewalk of standard dimension and placement, or
6. A sidewalk variance would preserve trees possessing the following characteristics:
  - (1) Adaptability to the particular soil, climate, and moisture conditions of this City;
  - (2) High resistance to gas, smoke, and disease;
  - (3) Freedom from litter and offensive odors;
  - (4) Wood that is not brittle and thereby easily broken by wind and sleet;
  - (5) A root structure compatible with planting in confined areas;
  - (6) Long normal life; or
7. There are pre-existing obstructions that cannot be easily or economically relocated or should not be



altered, such as grades, fills, water courses, natural topographic features or man-made obstructions, or

8. The adjoining sidewalks are non-standard as to width and/or location, or

9. The established neighborhood character or mature landscaping on the site would be damaged to a degree that outweighs the public utility of the normal sidewalk requirement."

## **FUNDAMENTALS**

### **1. Governing Regulations:**

Sidewalk Ordinance (Article 8-6 R.O.A. 1994))

Development Process Manual, Chapter 23, Volume 2

### **2. Applicant:**

Property owner or his authorized agent

The City upon institution of an improvement district

### **3. Approval Mechanisms:**

Development Review Board; appeal to Environmental Planning Commission; appeal to City Council

## **SIDEWALK VARIANCE PROCEDURE**

Consultation with a Development Service Division staff member is recommended prior to application to ensure that there have been no changes to relevant policies and procedures and to determine scheduling deadlines for application review. Approximate time frames are shown on the flow chart.

### **Step 1: Application**

Obtain application form at the Albuquerque Development and Building Services Center.

Submit a completed application form and seven (7) copies of a sketch of the request to the Development Services Division.

### ***APPLICATION MATERIALS:***

Completed application form

Sketch of request showing

- . Location of sidewalk relative to street(s) and property line(s)
- . Location and dimensions of the right-of-way
- . Location of any landscaping and major topographical features
- . Location of any other physical obstructions
- . Dimensions of sidewalk width and setback areas
- . Scale and north arrow

### ***Outcome: The Development Services Division (internal processing; no applicant responsibility):***

Opens a case file

Schedules application for review at Development Review Board meeting

Notifies applicant by telephone with written confirmation of Development Review Board meeting date, time and location

Conducts field inspection of request location prior to Development Review Board meeting



## Step 2: Development Review Board Meeting

The purpose of this meeting is to discuss the appropriateness of the request. The applicant must be present at the meeting to describe the request and respond to questions.

### ***Outcome:***

Development Review Board reaches a decision to:

- . approve,
- . approve with conditions, or
- . deny.

Applicant will receive a Letter of Advice stating the Development Review Board's decision along with any conditions imposed.

The decision of the Development Review Board is final unless appealed to the EPC within fifteen (15) days. See Appeal Procedures, Chapter 15.

## Step 3: Sidewalk Permit

Approval of a sidewalk variance does not constitute approval of plans for a sidewalk permit. The Letter of Advice must accompany the sidewalk permit application.

**Click to view:**  
**Sidewalk Variance**  
*(Adobe Reader required to view this image)*



Comparison of Sidewalk Variance Criteria in the DPM and the IDO  
(Highlighted items are color coded to show overlap of DPM and IDO)

Development Process Manual (DPM) - Chapter 12 - Sidewalk Variance	
<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>Subject to site development plan review.</li> <li>Maintain or develop a design plan not consistent with uniform sidewalk installation.</li> <li>Historical significance and variance needed to maintain significance.</li> <li>Low intensity land use and sidewalk will not contribute to the public welfare.</li> <li>Insufficient right-of-way to permit the construction of a sidewalk.</li> <li>A sidewalk variance would preserve trees.</li> <li>Pre-existing obstructions that cannot be easily relocated or should not be altered.</li> <li>Adjoining sidewalks are non-standard as to width and or location.</li> <li>Mature landscaping would be damaged to degree it outweighs public utility of sidewalk.</li> </ol>	
IDO 6-6 (L)(3) – Variance DRB – Page 406	
<ol style="list-style-type: none"> <li>Any of the following applies <ol style="list-style-type: none"> <li>Special circumstances- hardship that is substantial, topography, etc.</li> <li>Pre-existing obstructions.</li> <li>Historical significance, variance is needed to maintain this.</li> <li>Established neighborhood character or landscaping would be damaged to a certain extent.</li> <li>Variance would encourage flexibility, economy, etc.</li> </ol> </li> <li>Not contrary to public safety, health or welfare.</li> <li>No significant material adverse impacts on surrounding properties</li> <li>Will not hinder future planning, ROW acquisition, building public infrastructure.</li> <li>Will no significantly conflict with adopted plans, ordinances, codes.</li> <li>Will not encourage development in floodplain.</li> <li>Will not undermine the intent of IDO or zone district.</li> <li>Will not allow a lot that does not meet IDO standards.</li> <li>Variance is the minimum necessary to avoid hardship.</li> <li>Variance for sidewalk requirements meets criteria below: 6-6-3(L)(b).</li> </ol>	
IDO Section 6-6-3(L)(b) – Page 408	
Variance to Sidewalk Requirements was Eliminated by R-19-150	
<ol style="list-style-type: none"> <li>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>City’s right-of-way is of insufficient width, but sufficient right-of-way to meet ADA or PROWAG.</li> <li>Adjoining sidewalks are non-standard as to width and/or location. Variance would allow sidewalks to match in width.</li> </ol>	





### Legend

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



0 25 50 100 Feet

2/6/2020





NR-LM

MX-T

SUMMER AV

ROSEMONT AV

ROSEMONT AV

R-1A

SAWMILL RD

CLAIRE CT

MX-L

OLD TOWN RD

MOUNTAIN RD

R-T

PR-2019-002811

14TH ST

GRANITE AV

13TH ST
































MARBLE AV

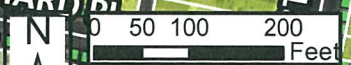
15TH ST

TH ST

ORCHARD RD

### Legend

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



2/6/2020



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## CITY OF ALBUQUERQUE

### CITY COUNCIL

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#### INTEROFFICE MEMORANDUM

**TO:** Brennon Williams, Director, Planning Department

**FROM:** Stephanie M. Yara, Director, Council Services *SMY 1/24/20*

**SUBJECT:** AC-19-18, Project PR-2019-002811, SI-2019-00158, VA-2019-00288,  
VA-2019-00416: Richard Chavez appeals the decision of the  
Development Review Board (DRB) to Deny a Variance for all or a  
portion of Lots 7-10 Block 44 Perea addition, zoned R-1A, located at  
the NEC of 15th Street NW and Granite Ave. NW, containing  
approximately 0.32 acres

**DATE:** January 24, 2020

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At its January 22, 2020 meeting, the Council referred this matter to the Environmental Planning Commission. This appeal was assigned and scheduled to be heard by the Land Use Hearing Officer (LUHO), but the City Council determined that it should more appropriately be assigned to the Environmental Planning Commission per operation of R-19-150.

Attached you will find a complete copy of the official record to date.

cc: Russell Brito, Planning Department, Urban Design & Development Manager  
File AC-19-18



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

**APPEAL NO. AC-19-18**

**PR-2019-002811**

**S1-2019-00158; VA-2019-00288; VA-2019-00416**

**Richard Chavez, Appellant.**

1           This is an appeal of a decision from the Development Review Board (DRB) that  
2           implicates the sidewalk variance requirements of the Development Process Manual (DPM).  
3           Apparently, this appeal was mistakenly assigned and scheduled to be heard by this Land Use  
4           Hearing Officer (LUHO) when in fact it should have been assigned to the Environmental  
5           Planning Commission (EPC). At least, that is the position of the City Attorney's Staff.

6           Briefly, Appellant applied for a sidewalk variance under the DPM of which was denied  
7           by the DRB. That decision was appealed by Appellant. At the scheduled LUHO hearing, an  
8           Assistant City Attorney made a preliminary motion to dismiss this appeal, claiming that the  
9           EPC, not the LUHO, has subject matter jurisdiction over this appeal because Chapter 15 of  
10          the DPM requires that the EPC hear appeals from the DRB regarding the DPM. Thus, I  
11          respectfully defer to the City Council to reassign this appeal to the EPC.

  
Steven M. Chavez, Esq.  
Land Use Hearing Officer

January 8, 2020

Copies to:

Appellants,  
Party Opponents,  
City Staff

IN RE: AC-19-18

TRANSCRIPT OF PROCEEDINGS

January 7, 2020  
9:30 a.m.  
1 Civic Plaza  
Ninth Floor  
Albuquerque, New Mexico 87103

HELD BEFORE: MR. STEVEN CHAVEZ  
LAND USE HEARING OFFICER

REPORTED BY: DESTENIE VISARRAGA, RPR, NM CCR #136  
WILLIAMS & ASSOCIATES, LLC  
1608 5th Street, Northwest  
Albuquerque, New Mexico 87102



1 MR. CHAVEZ: Good morning. So we are here for a  
2 land use appeal. This is Appeal Number 8 -- or 19-18 --  
3 AC19-18; is that correct?

4 Okay. I'm sorry. Let me pull up my file. My  
5 name is Steven Chavez. I'm the land use hearing officer  
6 for the City of Albuquerque. Today's date is January 7,  
7 2020. And it's my understanding that there are some  
8 preliminary issues regarding this appeal.

9 MS. SANCHEZ: Yes.

10 MR. CHAVEZ: And what are those preliminary  
11 issues? State your full name for the record.

12 MS. SANCHEZ: Good morning, Mr. Chavez.

13 MR. CHAVEZ: Good morning.

14 MS. SANCHEZ: My name's Nicole Sanchez. I'm an  
15 assistant city attorney representing the Development  
16 Review Board.

17 I just wanted to note for the record a  
18 preliminary jurisdictional issue. Under City Resolution  
19 19-150, sidewalk variances are a procedure covered by  
20 the Development Process Manual, or the DPM, not the  
21 Integrated Development Ordinance or the IDO.

22 In the DPM, Chapter 12, DRB has the authority to  
23 make a decision on whether to grant or deny a sidewalk  
24 variance or waiver. Under this section, DRB's decisions  
25 are appealed to the Environmental Planning Commission or

1 the EPC, not the land use hearing officer.

2 So this may present a jurisdictional issue in  
3 this current appeal. Secondly, I would just like to  
4 note related to that, DRB did review Mr. Richard  
5 Chavez's sidewalk waiver under the IDO and the DPM, and  
6 both of those requirements for a sidewalk waiver are  
7 substantially similar.

8 MR. CHAVEZ: Okay.

9 MS. SANCHEZ: So I just want to make that note  
10 for the record.

11 MR. CHAVEZ: So that we don't go into -- thank  
12 you so much, Ms. Sanchez. So we don't go into the  
13 merits just yet.

14 Your name is, sir?

15 MR. RICHARD CHAVEZ: Richard Chavez.

16 MR. CHAVEZ: Let me swear you in. Can you come  
17 on up? Can you have a seat? I just have a few  
18 questions for you regarding the jurisdictional issue  
19 that was raised, Mr. Chavez. Good morning.

20 MR. RICHARD CHAVEZ: Can you please raise your  
21 right hand?

22 RICHARD CHAVEZ

23 Having been first duly sworn under oath,  
24 was questioned and testified as follows:

25 MR. CHAVEZ: Okay. Thank you. Do you understand



1 what Ms. Sanchez raised regarding the jurisdictional  
2 issue Resolution --

3 Is it 150?

4 MS. SANCHEZ: Yes.

5 MR. RICHARD CHAVEZ: I understand what she said,  
6 but that was never brought up prior to this discussion.

7 MR. CHAVEZ: I understand. I did read Resolution  
8 150, and I would agree with you. I didn't see in the  
9 IDO or in the resolution where the issue regarding the  
10 DPM would fall into the EPC's lap. Can you clarify that  
11 a little bit more?

12 MS. SANCHEZ: Yes. Under the development process  
13 manual, Chapter 12 --

14 MR. CHAVEZ: Okay. So it's in the DPM itself?

15 MS. SANCHEZ: Yes, it is.

16 MR. CHAVEZ: I did see it in the DPM. I know the  
17 resolution cites to the DPM. The resolution is not the  
18 best-crafted resolution in the world, but certainly it  
19 is the law of Albuquerque now. And so I will draft a  
20 letter order to the City Council, explaining to the City  
21 Council that this matter should be before the EPC,  
22 because it's the City Council who delegated this appeal  
23 to me.

24 And so it -- I think that I do need to resolve it  
25 that way with the City Council, and then the City

1 Council can either decide to delegate it to the EPC or  
2 they can send it back to me, or they can deal with it  
3 themselves, certainly.

4 Yes, sir.

5 MR. RICHARD CHAVEZ: Can I ask a question?

6 MR. CHAVEZ: Absolutely.

7 MR. RICHARD CHAVEZ: So in Chapter 12 that the  
8 attorney's referencing, that is the introduction to the  
9 variance -- for sidewalk variance. I didn't see  
10 anywhere in there that there was any language with  
11 regard to the waiver of the sidewalk, or waiver for the  
12 sidewalk. That chapter was strictly related to the  
13 variance, which they educated me too, but I didn't see  
14 no language in there that referred to any kind of waiver  
15 with regard to the Chapter 12 introduction for sidewalk  
16 variance.

17 MR. CHAVEZ: Now, I cannot answer that question,  
18 because that's a merits issue, and we're dealing with  
19 the jurisdictional issue at this time. And because I  
20 don't want to deal with the merits issue until the  
21 jurisdictional issue is resolved, I'm not go to answer  
22 that question for you, sir, I'm sorry. I think that  
23 jurisdictionally, I need to determine whether or not  
24 this matter needs to go back to City Council and  
25 ultimately to the EPC. I did have an occasion to read



1 that jurisdictional issue in the resolution and in the  
2 DPM, and I would agree with Ms. Sanchez that if there is  
3 a valid question regarding whether or not the EPC has  
4 jurisdiction, and I think -- I just need to look at it a  
5 little closer today. And I apologize for wasting your  
6 time coming down here for this, but I don't have control  
7 over that. So I think it's an honest mistake that was  
8 made. I don't know where it was made, but we'll get it  
9 resolved. Okay.

10 MR. RICHARD CHAVEZ: Can I make a statement?

11 MR. CHAVEZ: If it's not regarding merits. If  
12 it's regarding the jurisdictional issue, you can.  
13 Otherwise, I'm not going to hear the merits of your  
14 argument, sir.

15 MR. RICHARD CHAVEZ: No. With regard to the  
16 jurisdictional issue, does that mean this is going to be  
17 delayed?

18 MR. CHAVEZ: Absolutely. That's the problem.  
19 But I will work as quickly as possible. I will get a  
20 letter out by -- what's today? Today's Tuesday. I will  
21 get a letter out by the end of tomorrow to the City  
22 Council. I normally have 15 days to do that. I will do  
23 it tomorrow so that we can get this resolved as quickly  
24 as possible. I don't know how long it will take for the  
25 City Council to deal with it. That's something I don't

1 have control over. But I will ask them to deal with it  
2 right away. Okay?

3 MR. RICHARD CHAVEZ: I appreciate that. I'm just  
4 concerned that this sort of is a pattern of lack of  
5 information that I'm being provided with regard to the  
6 process and the requirements that the planning  
7 department requires. So it's a concern for me.

8 MR. CHAVEZ: I think it's a valid concern. But I  
9 don't have control --

10 MR. RICHARD CHAVEZ: No, I totally understand  
11 what you're saying, that this is going to be deferred  
12 until we determine which jurisdiction is going to hear  
13 this hearing.

14 MR. CHAVEZ: Well, I think what I'm trying to say  
15 very politely is that I need to look at it a little  
16 closer, but I'm leaning towards agreeing with  
17 Ms. Sanchez. I think the language is very clear -- it's  
18 not really that clear, but it's clear enough to where  
19 there's an issue that the City Council has to resolve  
20 with the jurisdiction, and I will help them with that  
21 resolution in a letter. I'll get a copy of it to you,  
22 Mr. Chavez. Which brings me to your contact  
23 information. Do you have an e-mail address, sir?

24 MR. RICHARD CHAVEZ: Yes, sir.

25 MR. CHAVEZ: Can you give it to me?



1 MR. RICHARD CHAVEZ: R-c-e-a-g-l-e --

2 MR. CHAVEZ: I'm sorry, r-c-e- --

3 MR. RICHARD CHAVEZ: -- -a-g-l-e, the number 2  
4 s-k-y@gmail.com.

5 MR. CHAVEZ: And, Ms. Sanchez, I think I have  
6 your e-mail address already.

7 MS. SANCHEZ: Yes.

8 MR. CHAVEZ: So I will get that out by the end of  
9 tomorrow. Okay.

10 Anything else? Thank you. Let's close the  
11 hearing. Thank you so much.

12 (The Hearing was concluded at 9:38 a.m.)

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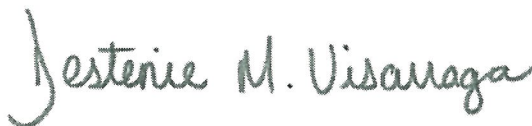
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## REPORTER'S CERTIFICATE

I, DESTENIE M. VISARRAGA, RPR, NM CCR #136, DO  
HEREBY CERTIFY that I did report in stenographic  
shorthand the questions and answers set forth herein,  
and the foregoing is a true and correct transcript of  
the proceeding had upon the taking of this Hearing.

I FURTHER CERTIFY that I am neither employed by  
nor related to nor contracted with any of the parties or  
attorneys in this case, and that I have no interest  
whatsoever in the final disposition of this case in any  
court.



Destenie M. Visarraga, RPR, NM CCR #136  
License Expires: 12/31/20



The following comments will be provided to the City Council by Council staff for the January 22, 2020 Council meeting.

**AC-19-18 Project PR-2019-002811, SI-2019-00158, VA-2019-00288, VA-2019-00416: Richard Chavez appeals the decision of the Development Review Board (DRB) to Deny a Variance for all or a portion of Lots 7-10 Block 44 Perea addition, zoned R-1A, located at the NEC of 15th Street NW and Granite Ave. NW, containing approximately 0.32 acres**

**I. Introduction:**

A. The issue in this appeal is whether an appeal of DRB's decision on a sidewalk waiver request goes to the EPC or the City Council.

B. The LUHO held a brief hearing on the matter and deferred to the City Council for a determination as to the proper procedure.

**II. Background:**

A. The current text of the IDO specifies that the granting or not of a "sidewalk variance" is a decision within the discretion of the DRB, and that the DRB's decision in this regard is appealable to the City Council through the LUHO. [IDO § 14-16-6-6(L)(3)(b), Tbl. 6-1-1]

B. However, the City enacted R-19-150 last year which purports to augment certain DRB processes called for within the IDO in order to promote appropriate procedural safeguards for various types of decisions. To this end, R-19-150 removed the "sidewalk variance" process from within the purview of the IDO, in favor of the existing process and procedures found within the Development Process Manual.

C. The Development Process Manual specifically provides that appeals of the DRB relating to sidewalk variances (or "waivers") is first appealable to the EPC, as opposed to going directly to the City Council through the LUHO.

**III. LUHO Findings & Recommendation:**

A. The LUHO recognized the possible conflict or discrepancy between the IDO and the DPM, but determined that that given the novelty of this issue, the City Council should ultimately make the determination about the effect of R-19-150 on the process.

**IV. Staff Comments & Recommendation:**

A. R-19-150 appears to have intended to augment the requirements of the IDO with respect to this type of application. This augmentation was intended as temporary until such time the IDO could be updated as part of the IDO annual update process. In the meantime, it appears that the effect of R-19-150 is to place this appeal within the initial authority of the EPC.

B. There appears to be no procedural harm from referring this matter to the EPC per the terms of R-19-150 and the DPM, because any decision of the EPC is itself ultimately appealable to the City Council.

C. Accordingly, this matter should be referred to the EPC for it to hear the initial appeal.

**V. Council Options:**

1. Remand to the LUHO for hearing – The Council may remand to the LUHO for a hearing on the appeal.

2. Refer to the EPC for initial hearing – the City Council may refer this matter to the EPC for an initial appeal hearing which will result in a final determination unless additional appeals are filed.