

**PLANNING DEPARTMENT**  
**URBAN DESIGN & DEVELOPMENT DIVISION**  
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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**  
**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.

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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)).

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**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.

For more information regarding the appeal process, please refer to Section 14-16-6-4(U) of the IDO, Administration and Enforcement. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal EPC Recommendations to City Council; rather, a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's recommendation.

You will receive notification if any person files an appeal. If there is no appeal, you can receive Building Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

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