



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

March 24, 2020

TO: Patrick Davis, President, City Council

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

SUBJECT: AC-20-6, Project PR-2019-002811 SD-2019-00158 VA-2019-00288: Richard Chavez appeals the decision of the Environmental Planning Commission (EPC) to deny an appeal for a variance for all or a portion of Lots 7-10, Block 44, Perea Addition, zoned R-1A, located at the northeast corner of 15th Street NW and Granite Ave. NW, containing approximately 0.32 acre(s). (J-13)

OVERVIEW

An application for a Preliminary/Final Plat and Sidewalk Variance was filed by the applicant on August 30, 2019. The Development Review Board (DRB) found that granting a variance to the sidewalk installation requirement would not promote the public welfare and would be contrary to the criteria for a sidewalk variance. The subject site is in a residential area of Old Town that has pedestrian activity. The lack of sidewalks around the perimeter of the site is a gap in the sidewalk system which makes it more difficult to have good pedestrian connectivity throughout the neighborhood. The vast majority of parcels in the immediate area have a public sidewalk. The DRB denied the sidewalk variance on October 30, 2019.

The applicant appealed this decision on November 12, 2019; the appeal was filed in a timely manner. The appeal was heard by the Environmental Planning Commission¹ on February 13, 2020. The EPC voted unanimously to deny the appeal. The applicant filed a timely appeal of the determination of the EPC.

Section 14-16-6-4(U) of the Integrated Development Ordinance (IDO) outlines the applicable decision

¹The current, in effect, DPM states that "The decision of the Development Review Board is final unless appealed to the EPC within fifteen (15) days." (DPM, Chapter 12, Sidewalk Variance procedure, Step 2). The appeal of the DRB decision was originally routed to the LUHO due to an oversight. The appeal was then redirected by the LUHO and City Council to the EPC for an appeal hearing.

criteria, and centers on whether the DRB or the EPC made one of the following mistakes:

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).

HISTORY

A thorough review of the case history is in the memo prepared to the Environmental Planning Commission and is attached as Exhibit 1 to this memo.

APPEAL

1. **Appellant: A lot line adjustment should not be processed through the DRB because it does not meet the State's Statutory definition of development under NMSA 1978 Section 3-20-8 and therefore, the City's sidewalk requirements do not apply.**

Staff Response: The City of Albuquerque is a home-rule municipality. Under the State of New Mexico Constitution, municipalities that adopt a charter may exercise the legislative powers and perform all functions not expressly denied by general law or charter. N.M. Const. art. 10, § 6, subd. D. Planning authorities of a municipality are required to adopt regulations governing the planning and platting of land within the its municipal boundary. NMSA 1978, § 3-19-5. Pursuant to planning and platting authority, municipalities must also adopt regulations that govern the subdivision of land within the municipal jurisdiction. NMSA 1978, § 3-19-6. The City created such regulations, as required by state statute, by adopting the IDO and the Development Process Manual (DPM) to govern the subdivision of land. Therefore, the IDO and the DPM control the process for subdividing property within the City.

Appellant contends that an alternative summary procedure should be used to approve his subdivision pursuant to NMSA 1978, § 3-20-8. While that procedure may be applicable, NMSA Section 3-20-8(2) is ignored, which says, "any subdivision approved as authorized in this section shall be in substantial conformity with the subdivision regulations of the planning authority."

The City Sidewalk Ordinance requires all properties within the City to have a sidewalk, with few exceptions. Albuquerque, N.M., Rev. Ordinances (ROA) ch. 6, art. V, § 6-5-5-3 (1974, amended 2017). None of the sidewalk requirement exceptions apply to the appellant's proposal. Property owners abutting the sidewalk are responsible for the cost of installing the sidewalk. *Id.* Therefore, the appellant is required to install a sidewalk, at his expense, to comply with the City Sidewalk Ordinance. To exempt the subject property would not be in substantial conformity with the subdivision regulations of the City.

- 2. Appellant: The DRB staff confused the application as to whether it was a sidewalk waiver or a sidewalk variance.**

Staff Response: The request was processed correctly, even though the terminology provided to the applicant was first described as a 'waiver' and then was corrected to be a 'variance.'

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. Page 4 of "Exhibit A, Item Page 406, 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 previously unaware of 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 the outcome is the same. The decision criteria are similar between the previous provision that was in the IDO and the current DPM.²

Staff prepared a document that was presented to the EPC that compared the Design Process Manual-Chapter 12 "Sidewalk Variance" to the IDO 6-6(L)(3) "Variance to DRB" (p. 406) and to IDO Section 6-6-3(L)(b) "Variance to Sidewalk Requirements" (page 409—which was eliminated by R-19-150). This document is attached as Exhibit 2 and shows the similarities in the criteria. Until the Annual Update of the IDO is complete, the practice of the Traffic Engineer is to review all the criteria together. The core criterion is whether or not the sidewalk would contribute to the public welfare. In their review, the DRB determined that the sidewalk would contribute to the public welfare by improving connectivity and working toward filling in gaps in the existing sidewalk system.

- 3. Appellant: The sidewalk would not benefit pedestrians or pedestrian safety in the area. There is not a high degree of pedestrian activity. There is a lack of sidewalk in the immediate area.**

Staff Response: None of the DPM criteria were met to allow a sidewalk variance. In particular, the neighborhood does not meet the criteria #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...

Much of the neighborhood has sidewalk and is within the Old Town area where pedestrian traffic is considerable enough for a residential neighborhood. Where other sidewalk variances have been allowed by the DRB, the variances pertained to well-developed cul de sacs with low pedestrian use and no existing sidewalks. Exhibit 3 was prepared for the Environmental Planning Commission to show where sidewalk exists in the immediate area of the subject parcel and the greater neighborhood. Exhibit 3 shows that there is a substantial network of sidewalks in the

² 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.

neighborhood and that the addition of sidewalks would contribute to the public welfare.

The City Traffic Engineer also found that the sidewalk would contribute to compliance with ADA regulations as well as providing a clear, defined path for pedestrians.

- 4. Appellant: Even the construction of a three foot sidewalk would require a revocable permit.**

Staff Response: A revocable permit applies to the private use of the public right-of-way. The applicant has a fence that is in the public right-of-way. The request to replat the property requires compliance with existing rules for new development (IDO Section 1-7(A)(1)). When the sidewalk is constructed, the fence will continue to be located within that same right-of-way. The City requires either the removal of the fence or that the property owner obtain a revocable permit. The revocable permit requires an annual payment, as well as sufficient insurance to indemnify the City for potential accidents.

- 5. Appellant: The sidewalk will create a tripping hazard because of the transition to the alleyway.**

Staff Response: The construction of the sidewalk would include review of the sidewalk design. That design would require that the sidewalk transition to any adjoining surfaces that are of differing heights or surfaces.

All property owners within the City are responsible to comply with the Sidewalk Ordinance. (ROA Section 6-5-5-3). Before sidewalk installation, the property owner is required to secure a City maintenance bond to protect the construction of a sidewalk from defects or improper construction for one year from the date of construction (ROA Section 6-5-5-8). The bonded contractor or the property owner has a duty to repair or replace a defective sidewalk within one year of construction (ROA Section 6-5-5-9). If there are any defects in the transition from the sidewalk to the alleyway, the property owner and contractor have a duty to repair or replace the sidewalk.

- 6. The City installed sidewalks on Broadway and Lomas, but not on the applicants's streets which are 15th and Granite.**

Staff Response: Both the IDO and the City Code require all properties to have sidewalks. The City Council creates the Capital Improvements Program (CIP) to allocate funding for improvements. This process is outside the purview of the DRB, which is solely charged with implementing the DPM and IDO in situations like this.

CONCLUSION

The applicant's request did not meet the criteria for the granting of a sidewalk variance in accordance with the DPM, Chapter 12. Consequently, the DRB denied the proposed variance. In the appeal, the appellant has not offered evidence that contradicts the findings or action of the DRB and the EPC. The

appeal fails to demonstrate that the criteria for the granting of an appeal as outlined in Section 14-16-6-4(U)(4) of the IDO has been met. Neither the DRB nor the EPC acted fraudulently, arbitrarily, or capriciously; the decision was adequately supported with substantial evidence in the form of Findings listed in the Official Notice of Decision; and the DRB did act within its authority in applying applicable requirements.



Jolene Wolfley, Chair
Development Review Board
Planning Department

- Exhibit 1: Planning Memo to the Environmental Planning Commission for VA-2019-00288
- Exhibit 2: Comparison of Sidewalk Variance Criteria in the DPM and the IDO
- Exhibit 3: Graphic showing existing sidewalk in the immediate area and the neighborhood

TABLE OF CONTENTS

AC-20-6

PR-2019-002811

VA-2019-00288

AC-19-18

PAGE(S)

MEMO.....	
APPEAL APPLICATION / REASON FOR APPEAL	1A – 22A
EPC NOTIFICATION OF DECISION FEBRUARY 13, 2020.....	23A – 24A
EPC STAFF REPORT, FEBRUARY 13, 2020.....	25A - 47A
EPC MINUTES, FEBRUARY 13, 2020.....	48A – 74A
ADDITIONAL INFORMATION.....	75A- 101A
AC-19-18.....	1 - 182



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)
		Appeals
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

APPLICATION INFORMATION

Applicant: <u>RICHARD G. CHAVEZ</u>		Phone: <u>505-934-5979</u>
Address: <u>906 15th ST. NW</u>		Email: <u>rc.eagle2sky@gmail.com</u>
City: <u>Alb.</u>	State: <u>NM</u>	Zip: <u>87106</u>
Professional/Agent (if any):		Phone:
Address:		Email:
City:	State:	Zip:
Proprietary Interest in Site:		List all owners: <u>EPC</u>

BRIEF DESCRIPTION OF REQUEST Request Appeal for Denial of my Sidewalk Waiver

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

Lot or Tract No.: <u>Lots 7-10</u>	Block: <u>1st POREA</u>	Unit:
Subdivision/Addition:	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): <u>J-13</u>	Existing Zoning: <u>R-1A</u>	Proposed Zoning:
# of Existing Lots: <u>4</u>	# of Proposed Lots: <u>2</u>	Total Area of Site (acres): <u>0.32</u>

LOCATION OF PROPERTY BY STREETS

Site Address/Street: <u>NEC 6 15th St.</u>	Between:	and:
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CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Project # <u>2019-002811 - VA 2019-00288</u>	
Signature: <u>Richard Chavez</u>	Date: <u>2-26-2020</u>
Printed Name: <u>RICHARD G. CHAVEZ</u>	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees	Case Numbers	Action	Fees
<u>VA-2020-00070</u>	<u>Appeal</u>	<u>\$130</u>			

Meeting/Hearing Date: <u>2-28-2020</u>	Fee Total: <u>\$130</u>
Staff Signature: <u>[Signature]</u>	Date: <u>2-28-2020</u> Project # <u>PR-2019-002811</u>

FORM A: Appeals

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

A single PDF file of the complete application including all plans and documents being submitted must be emailed to 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.

- ☐ 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)
- ☒ APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)


- ☒ Interpreter Needed for Hearing? ☐ if yes, indicate language: _____
- ☒ Project number of the case being appealed, if applicable: Proj. # 2019-002811 VA-2019 VARIANCE
- ☒ Application number of the case being appealed, if applicable: VA 2019-002811
- ☐ Type of decision being appealed: DENIAL of WAIVER
- ☐ 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)
- ☐ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2) - 14-16-6-4(2)(4)Q
- ☒ Letter of authorization from the appellant if appeal is submitted by an agent
- ☐ 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.

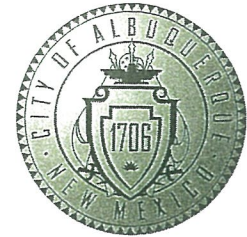
Signature: Richard G. Chauvet Date: 2-26-2020

Printed Name: RICHARD G. CHAUVET ☐ Applicant or ☐ Agent

FOR OFFICIAL USE ONLY

Project Number:	Case Numbers
<u>PR-2019-002811</u>	<u>VA-2020-00070</u>
Staff Signature: <u>[Signature]</u>	
Date: <u>2-28-2020</u>	

CITY OF ALBUQUERQUE



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

February 13, 2020

Richard Chavez
906 15th Street NW
Albuquerque NM, 87104

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 15th ST NW and Granite Ave NW, containing approximately 0.32 acre(s). (J-13)

Staff Planner: Jolene Wolfley

PO Box 1293

On February 13, 2020 the Environmental Planning Commission (EPC) voted to deny this Appeal.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **February 28, 2020**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th 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

Brennon Williams, Planning
Director

City of
Albuquerque

Plaza Del
Sol

600 2nd St.
NW

Request for Appeal Hearing to Land Use Hearing Officer for Denial of My Appeal to EPC on February 13TH. My Appeal is based on 16-6-4(U) (4) a. The decision making body or appeal body acted fraudulently, arbitrarily or capriciously.

Although the following comments are not part of the established criteria, I also want to address the Planning Departments lack of Transparency through this process and their negligence in administering this process.

Introduction

The reason you can't fight City Hall is they're always changing the rules. When you codify regulations, staff tends to act in an arbitrary and arrogant manner without accountability or any repercussions. As a Tax-Payer and Customer requesting Services to be rendered from the City Planning department, which comes at a cost to the tune of more than a \$1000.00 to date and more to come with the filing of this appeal, I should expect sound customer service. Sound customer service means all information pertinent to the application should be provided with clear and concise instructions. There should not be any question as to what I am applying for and what I should be receiving for the amount of money I'm having to spend to navigate through the DRB process. What I have come to find out is that the city planning department does not have a process to approve or deny a Lot Line Adjustment that consolidates 4 lots to 2 lots. The DRB, IDO and Design Process Manual are designed for the Development process and projects. My project does not meet the definition of a Development as called for in the IDO. The City IDO on page 456 specifically defines **DEVELOPMENT** as *"Any 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 purpose of the IDO, this term includes new development and redevelopment on existing lots."* If my project does not meet the definition of a "Development", why was it arbitrarily determined to come before the DRB. The question I have for the Planning staff and DRB is, if the State Statutes requires a process for the equivalent of a

lot line adjustment, why is that process not a part of the IDO and DPM, if state statutes calls for it? **State Statute Chapter 3 Municipalities Section 3-20-8 Alternate Summary Procedure B.(1) (b) Re-subdivision where the combination or recombination of portions of previously platted lots does not increase the total number of lots.** This process could have been addressed administratively through the Planning Department in lieu of arbitrarily sending to the application to the DRB, which is designed for real the Development process and projects.

1

History

When I first approached the Planning Department it was to ask what I needed to do to adjust my Lot Lines and Consolidate 4 lots to 2 lots. I was told by planning staff that my project would be considered a Development and that I would have to adhere to the requirements of a sub-division and install sidewalks. When I said that I did not want to have to install sidewalks because I would be an Island on my block with no other sidewalks on three corners of the intersection and no plan for sidewalks by my neighbors. What planning staff said to me was that I had two options, a SIDEWALK WAIVER, or a SIDEWALK VARIANCE. It was very clear that the Waiver was not to install the sidewalk and the Variance was referencing the width of the sidewalk. I submitted an application and paid for a Sidewalk Waiver. What I wasn't told was that there was no criteria for a Sidewalk Waiver and that the criteria to be used was for the Sidewalk Variance, which would be in section 16-6-6(L) (3). This section provides one set of criteria that you have to meet all 3 sub-categories of that specific criteria to get a Variance. What I was not told by staff and learned of it on my own, was that there was an Introductory Chapter to Chapter 12 Sidewalk Variance that had nine categories that provided an exception to the Sidewalk Variance. The criteria listed in 16-6-6(L) (3) was but one of the nine exceptions in the Introductory Chapter 12, Sidewalk Variance criteria. When I asked at the Oct. 30th meeting why that information was never provided to me, by Planning staff or the DRB at the previous meeting I had with the DRB, they could not answer the question, Legal staff was asked by the Chair to step in and Legal stated to DRB, that they needed to sit down and discuss the issues. My decision was postponed to another meeting until staff could regroup and answer my question. A problem is that the DRB never answered my question regarding willfully omitting pertinent information to the application process. I have since asked this question of the EPC and to date, Planning staff, EPC and the DRB have not answered my question as to why they did not provide Introductory Chapter 12 to all applicants requesting a Sidewalk Variance prior to my application. I am still requesting an answer to this question before the Land Use Hearing Officer (LUHO). I was placed in a position by Planning staff to request a Sidewalk Waiver from my adjustment to my Lot Lines and consolidate 4 lots to 2 lots. Throughout this process, Planning Staff and DRB were using the Term Sidewalk Waiver and Sidewalk Variance interchangeably which created a great deal of confusion as to what I was appealing, as the DRB and Planning staff kept trying to get me to apply for a Sidewalk Variance. You will note that on the December

4th Denial Letter from Mr. Brennon of the DRB, he uses both terms interchangeably in the DRB denial letter. In the Overview section of the denial letter, he used the term Variance, but in the History section he uses the term Waiver. My Appeal to the EPC was stated as an Appeal to the Sidewalk Variance, which was false because I never requested a Sidewalk Variance. From the beginning of this process, the DRB and Planning staff directed me to check the Variance box on the first page of the application form and I would also need to check off on the Sidewalk Waiver box on the 2nd page and complete a summary as to why I thought my request would qualify for a Sidewalk Waiver. The summary was submitted as with my initial application and is in the packet of my denial by DRB. The intent of the DRB and Planning staff to insist that I applied for a Variance is simply CYA, because I never did.

At some point in time someone on the city council must have recognized the lack of clarity and confusion that this process created and adopted a Resolution in May 2019 for proposed changes to the Ordinance that would consolidate the Waiver vs Variance language into one definition in order to clear up the process and ambiguity between the two terms. In fact the DRB and Planning staff was supposed to use this criteria for "Interim Procedures for the Development Review". The fact that the Planning Department did not identify these changes until the January 7th meeting, is negligence. To require one

2

set of rules and then change them because someone in planning was not addressing the changes in a timely manner, then to say that Decision Criteria is similar without defining similar, lacks transparency. Those changes should have been made available at the time of submitting my application on August 30, 2019, so that I was fully aware of all the implications my application was facing, but staff will never own up to that. I was never notified of the changes prior to either the cancelled LUHO Appeal on January 7, 2012 when staff became aware of these issues or the EPC appeal on February 13, 2012. To date, I have yet to receive a copy of the Resolution so I could determine on my own, the impact to my application and various appeals I've had to request. In my denial letter from EPC they refer to the Resolution as an Admin. Action by the CAO, pending approval to incorporate the new language in the Sidewalk Ordinance. No transparency as to when and how this problem occurred until this last Denial letter from EPC nine months after the fact.

In my Appeal to the DRB and EPC the following issues were brought up by the Traffic Engineer:

A.) This has a "high degree of pedestrian activity, which is true for approximately five days of the year. The Christmas Tree lighting in Old Town, somewhat less, but active for the Saturday and Sunday of the Old Town Fiestas, The annual Old Albuquerque festivities at Tiguex Park and maybe a couple of events at Tiguex Park during the year. Other than those days mentioned, pedestrian activity is very limited. This is from the perspective of someone who lives there and observes the traffic on a daily basis for the last 20 plus years. What is the Traffic Engineers statement based on, data, surveys, or assessments that would confirm the

assumption that the high pedestrian activity is a high degree?

B.) Another comment by the Traffic Engineer was that installing sidewalks would enhance the safety of the area and address ADA standards, which is a very ironic statement. By installing a 4ft sidewalk on 15th, it would literally end at the trunk of an Elm tree of my neighbor's house, who has no interest or need to voluntarily install sidewalk to go around the tree. If it was a 3ft sidewalk it would end at the root base of the elm tree. What do we know about Elm tree roots? They will raise the sidewalk over time and create a serious tripping hazard for someone walking south day or night and would make it difficult for a wheelchair or individual on a walker to access or egress, on or off the sidewalk. In order to install a 3 ft. sidewalk I would have to pay for a Revocable Permit to keep the existing fence in place. Mind you the Revocable Permit program is in such disarray, that the city staff does not know how many people have Revocable Permits or who has paid for their permits, as stated by the Traffic Engineer at the EPC Hearing. The other problem, which the Traffic Engineer and Commissioner Karen Hudson agreed on, is that you will have a 2" to 3" deviation between the surface of the sidewalk and the ground where the sidewalk abruptly ends. In time the Elm tree root system will increase that deviation by another 2" to 3" inches over time. Real sidewalk safety enhancements for the block would be from one end of the block to the other end of the block. This would allow a person in a wheelchair or walker, to have access and egress on the sidewalk from one end of the block to the other, which would be a truly safe ADA access. Going east there is no ADA accessible egress off the sidewalk or ADA access to the neighbors sidewalk. The alley surface can make it difficult for a wheelchair or walker which makes me vulnerable to potential legal liability for conditions I have no control over.

C.) If I were to install a 3 ft. sidewalk, in order to keep my existing fence I would have to pay an annual Revocable Permit fee. The problem with this program is that planning staff or the Traffic Engineer have no idea how many Revocable Permits exist and who has been paying their fees, according to their EPC testimony. Would you call this problem negligence, or incompetence that I am having to pay the price of the city Planning Department's lack of accountability in administering such a program? Administer the

3

program to all participants or not at all. Arbitrary application of the Revocable Permit program because the record keeping system is less than reliable, should not be an excuse for selective application of the requirements

D.) The Traffic Engineer stated that there's substantial streets with sidewalk in the area. What the Traffic Engineer failed to mention is that there are substantial streets in the area without sidewalks. Half a block south and two properties over from the property DRB claims has sidewalk, there are two adjoining properties with no sidewalk for another gap in the sidewalk system on 15th. One block south of me is the entire corner of 15th and Marble with no sidewalk. One block east of the Museums and one block north of Mountain Rd. has no curbing or sidewalk for one to two miles north of Mountain Rd on 15th St. There's no sidewalk across the

street going east or catty-corner from me, or on either side of the street on 15th from Granite to Mountain Rd. Mr. Schaffer on the EPC agreed with this assessment. For the Traffic Engineer to make the substantial sidewalks statement without addressing the substantial missing areas of sidewalk is a willful omission. When asked what the city plans to complete the sidewalk system north of my property are all the way to Mountain Rd. their plan is to wait for a property owner to come in and apply for a permit. That is not a plan, that is wishful thinking without any clear outcome. The property next to me is a rental property, has been for last 30 years, they have no plans to subdivide the property and the next neighbor over is a retired veteran on a fixed income who has no plans to sell his property nor could he afford the DRB process and cost associated with the development process, such as permit fees, survey plat development. In other words the cities plan for continuation of the sidewalk along 15th to create a safe traversable sidewalk is an administrative allusion, which leaves me as a permanent Island of sidewalk with all kinds of legal liability.

E.) The problem that the Tripping hazard presents is a serious legal liability to me the homeowner, because both the city and I know that there is a Tripping Hazard which has now become public notice. The only solution is to force my neighbors to install sidewalks. Contrary to the Hydrologist contention that the City Sidewalk Ordinance authorizes the Planning Department and city to send a Letter to the homeowner and request them to install sidewalk. When the Hydrologist contends is questionable because when asked by the EPC members whether it was a Request or Required, the Hydrologist did not clarify his answer. I could not find anything in the Ordinance that had any language as to the hydrologist contention. I would ask if that is the case, the city would have addressed the 400 million dollar problem of needs in sidewalk infrastructure for the entire city a long time ago. I would ask the Hydrologist for the section and language of the Ordinance that authorizes the city to require a property owner not utilizing the permit process to be required to install sidewalk as the Hydrologist states. If that were the case why has the city not sent out a notice to every property owner in the city with no sidewalk to get them to have them install sidewalks?

Conclusion

The Lot line Adjustment and consolidation of 4 lots to 2 lots should never been referred to the DRB as a Development project, my application to Adjust lot Lines and consolidate does not meet the IDOs definition of a Development project. The Appeal fees and subsequent fees should never have been a factor in my request. I should not be penalized for the city's lack of compliance with state statutes. The fact that The city and Planning Department does not have a process to address non-development related issues as required by Statute Chapter 3 Municipalities Section 3-20-8 Alternate Summary Procedure B.(1) (b) Re-subdivision where the combination or recombination of portions of previously platted lots does not increase the total number of lots, should not be my problem .

The lack of clarity and discombobulation that I was required to be funneled through with the

DRB process does not serve Property Tax payers well, who are responsible for 17% of city revenues and as customers seeking services to be rendered by the city. As a customer of city services that a property tax payer pays, it would be nice to be considered a customer instead of a nothing more than a Revenue Source to the city. The confusion and lack of clarity between the Sidewalk Waiver and a Sidewalk Variance on the part of the DRB and Planning Department, the lack of transparency in why they did not distribute Chapter 12 Introduction to Sidewalk Variance to all applicants prior to my application is a serious matter that should require some type of accountability of the Planning Department and the DRB,

4

on the cities part. As a lay person who pays property taxes who has not benefited from the city installing sidewalk from Broadway to 20th St. on Mountain Rd in the last 20 years and twice on Lomas from Broadway to 20th street, not once but twice in the last 20 years at no cost to property owners has me wondering why my streets should be ignored and if the city can find funding for those streets why can't they prioritize neighborhood streets such as mine. I would also like to seek a refund for all fees submitted with the exception of the initial application fee for my Lot Line Adjustment and Consolidation of 4 lots to 2 lots, as my application should never have been subject to the DRB process and outcomes as the Ordinance is currently written in relationship to state statutes Chapter 3 Municipalities Section 3-20-8.

Attachments:

Copy of Initial Application

Copy of Initial Application Summary

Copy of Sidewalk Waiver Application Fee

Photo of Elm Tree

Photo of Alley Surface Conditions

FORM S2: SUBDIVISION OF LAND – MINOR ACTIONS

Please refer to the DRB minor case schedule for meeting dates and deadlines unless noted differently below. Bring original Mylar of plat with property owner's and City Surveyor's signatures on it to the meeting. Your attendance is required.

A Variance – DRB for the Bulk Transfer of Land requires application on Form V in addition to this FORM S2.

>> INFORMATION REQUIRED FOR ALL MINOR SUBDIVISION APPLICATIONS

- ☐ 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 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 S2 at the front followed by the remaining documents in the order provided on this form.
- ☒ Zone Atlas map with the entire site clearly outlined and labeled

☐ SKETCH PLAT REVIEW AND COMMENT

- ☐ Letter describing, explaining, and justifying the request
- ☐ Scale drawing of the proposed subdivision plat (7 copies, folded)
- ☐ Site sketch with measurements showing structures, parking, building setbacks, adjacent rights-of-way and street improvements, if there is any existing land use (7 copies, folded)

☐ MAJOR SUBDIVISION FINAL PLAT APPROVAL (requires published notice, heard on the DRB Major Case Schedule)

- ☐ Letter describing, explaining, and justifying the request
- ☐ Copy of recorded IIA
- ☐ Proposed Final Plat (7 copies, 24" x 36" folded)
- ☐ Design elevations & cross sections of perimeter walls (3 copies)
- ☐ Landfill disclosure and EHD signature line on the Mylar if property is within a landfill buffer
- ☐ DXF file and hard copy of final plat data for AGIS submitted and approved

☒ MINOR SUBDIVISION PRELIMINARY/FINAL PLAT APPROVAL

- ☒ Letter describing, explaining, and justifying the request per the criteria in IDO Section 14-16-6-6(I)
- ☒ Sites 5 acres or greater: Archaeological Certificate in accordance with IDO Section 14-16-6-5(A)
- ☒ Form DRWS Drainage Report, Grading and Drainage Plan, and Water & Sewer Availability Statement submittal information
- ☒ Required notice with content per IDO Section 14-16-6-4(K)(6)
- ☒ Office of Neighborhood Coordination Public Notice Inquiry response
- ☒ Proof of emailed notice to applicable Neighborhood Association representatives
- ☒ Proposed Preliminary / Final Plat with property owner's and City Surveyor's signatures on the plat prior to submittal (7 copies, folded)
- ☒ Sidewalk Exhibit and/or cross sections of proposed streets (3 copies, 11" by 17" maximum)
- ☒ Site sketch with measurements showing structures, parking, building setbacks, adjacent rights-of-way and street improvements (to include sidewalk, curb & gutter with distance to property line noted) if there is any existing land use (7 copies, folded)
- ☐ Landfill disclosure statement per IDO Section 14-16-5-2(G) if site is within a designated landfill buffer zone
- ☐ Proposed Infrastructure List, if applicable
- ☐ DXF file and hard copy of final plat data for AGIS submitted and approved

☐ MINOR AMENDMENT TO PRELIMINARY PLAT OR INFRASTRUCTURE LIST

- ☐ Letter describing, explaining, and justifying the request per the criteria in IDO Section 14-16-6-4(X)(2)
- ☐ Original Preliminary Plat, Infrastructure List, and/or Grading Plan (7 copies, folded)
- ☐ Proposed Amended Preliminary Plat, Infrastructure List, and/or Grading Plan (7 copies, folded)

Note: Any application that does not qualify as a Minor Amendment in IDO Section 14-16-6-4(X) must be processed as a Major Amendment. See Form S1.

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: Richard E. Chavez Date: 7-16-19
Printed Name: RICHARD E. CHAVEZ ☐ Applicant or ☐ Agent

FOR OFFICIAL USE ONLY

Case Numbers:

Project Number

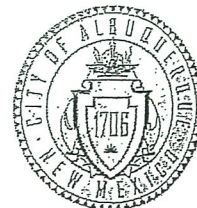
SD-2019-00158

PR-2019-002811

Staff Signature: [Signature]

10A

Date: 8-30-19

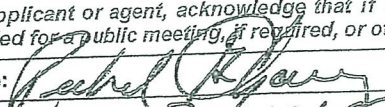
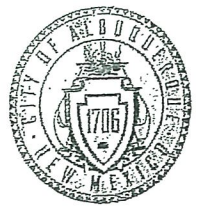



FORM V2: Waiver- DRB

Please refer to the DRB case schedules for meeting dates and deadlines. Your attendance is required.

>> INFORMATION REQUIRED FOR ALL VARIANCE/WAIVER AND VACATION APPLICATIONS

- Interpreter Needed for Meeting? ☐ if yes, indicate language: _____
- ☒ A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@caba.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 V at the front followed by the remaining documents in the order provided on this form.
- ☐ Zone Atlas map with the entire site clearly outlined and labeled
- ☐ Letter of authorization from the property owner if application is submitted by an agent
- ☐ **WAIVER - IDO**
- ☒ Letter describing, explaining, and justifying the request per the criteria in IDO Section 14-16-6(L)(3), compliance with the DPM, and all improvements to be waived, as applicable. *Note: If the request is based on a bulk land transfer, an application for Subdivision of Land - Minor shall be filed concurrently with the variance request and notice shall be provided on that plat regarding the applicant's agreement that building permits shall not be issued before further action by the DRB.*
- ☐ Scale drawing showing the location of the proposed variance or waiver, as applicable (7 copies, not to exceed 8.5" by 14")
- ☒ Proof of Neighborhood Meeting per IDO Section 14-16-6-4(C)
- ☒ Office of Neighborhood Coordination neighborhood meeting inquiry response
- ☒ Proof of email with read receipt OR Certified Letter offering meeting to applicable associations
- ☐ If a meeting was requested/held, copy of sign-in sheet and meeting notes
- ☐ Required notices with content per IDO Section 14-16-6-4(K)(6)
- ☐ Office of Neighborhood Coordination Public Notice Inquiry response
- ☐ Proof of emailed notice to affected Neighborhood Association representatives
- ☐ **WAIVER - DPM (MUST BE HEARD WITH SUBDIVISION/SITE PLAN ACTION)**
- ☐ Justification letter describing, explaining, and justifying the request per the criteria in DPM - Chapter 2
- ☐ Drawing showing the easement or right-of-way to be vacated (7 copies, not to exceed 8.5" by 11")
- ☐ Required notices with content per IDO Section 14-16-6-4(K)(6)
- ☐ Office of Neighborhood Coordination notice inquiry response, notifying letter, and proof of first class mailing
- ☐ Proof of emailed notice to affected Neighborhood Association representatives
- ☐ Buffer map and list of property owners within 100 feet (excluding public rights-of-way), notifying letter, and proof of first class mailing* *this step is not required if variance is to be heard with minor subdivision plat*
- ☐ Sign Posting Agreement - *this step is not required if variance is to be heard with minor subdivision plat*
- ☐ **TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION**
- ☐ **EXTENSION OF THE IIA FOR TEMPORARY DEFERRAL OF SIDEWALK CONSTRUCTION**
- ☐ Letter describing, explaining, and justifying the deferral or extension
- ☐ Drawing showing the sidewalks subject to the proposed deferral or extension (7 copies, not to exceed 8.5" by 14")

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, if required, or otherwise processed until it is complete.		
Signature: 	Date: 7-19-19	
Printed Name: Richard A. Chavez	<input type="checkbox"/> Applicant or <input type="checkbox"/> Agent	
FOR OFFICIAL USE ONLY		
Case Numbers: VA-2019-00288	Project Number: PR-2019-002841	
		
		Staff Signature: 
		Date: 8-30-19



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

SUBDIVISIONS	<input type="checkbox"/> Final Sign off of EPC Site Plan(s) (Form P2)	<input type="checkbox"/> Variance for Carport within setback(s) (Form V)
<input type="checkbox"/> Major - Preliminary Plat (Form P1)	<input type="checkbox"/> Amendment to Site Plan (Form P2)	<input type="checkbox"/> Vacation of Public Right-of-way (Form V)
<input checked="" type="checkbox"/> Minor - Preliminary/Final Plat (Form S2)	MISCELLANEOUS APPLICATIONS	<input type="checkbox"/> Vacation of Public Easement(s) DRB (Form V)
<input type="checkbox"/> Major - Final Plat (Form S1)	<input type="checkbox"/> Extension of Infrastructure List (Form S1)	<input type="checkbox"/> Vacation of Private Easement(s) (Form V)
<input type="checkbox"/> Amendment to Preliminary Plat (Form S2)	<input type="checkbox"/> Amendment to Infrastructure List (Form P1)	PRE-APPLICATIONS
<input type="checkbox"/> Extension of Preliminary Plat (Form S1)	<input type="checkbox"/> Variance - Temporary Deferral of SW (Form P2)	<input checked="" type="checkbox"/> Sketch Plat Review and Comment (Form P2)
	<input checked="" type="checkbox"/> Variance - Sidewalk Waiver (Form V)	
SITE PLANS	<input type="checkbox"/> Variance to IDO (Form V)	APPEAL
<input checked="" type="checkbox"/> DRB Site Plan (Form P2)	<input type="checkbox"/> Variance to DPM (Form V)	<input type="checkbox"/> Decision of DRB (Form A)
BRIEF DESCRIPTION OF REQUEST		

APPLICATION INFORMATION

Applicant: RICHARD G. CHAVEZ	Phone: 505-934-5979
Address: 906 15th N.W.	Email: rc2ag1625ky@gmail.com
City: ALBUQUERQUE	State: NM
Professional/Agent (if any):	Zip: 87184
Address:	Phone:
City:	Email:
State:	Zip:
Proprietary Interest in Site:	List all owners:

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

Lot or Tract No.: Lot 97A-10-A	Block: 4A	Unit:
Subdivision/Addition: PEREA	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): 113	Existing Zoning: R 1-A	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: 15th & Granite	Between:	and:
--	----------	------

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

--

Signature: Richard Chavez	Date: 7-16-19
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
SD-2019-00158	waiver P&F	\$500.00			
VA-2019-00288	Waiver-100	\$325.00			
Meeting/Hearing Date: September 11, 2019	Fee Total: \$825.00				
Staff Signature: [Signature]	Date: 8-30-19	Project # PR-2019-002811			

within the thresholds established by Subsection 14-16-6-4(O) (Deviations) and is granted by the DRB as part of this approval.

9. The Waiver approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

10. The Waiver for Sidewalk Requirements meets the criteria in (b) below.

11. The Waiver for Front Yard Parking meets the criteria in (c) below

6-6(L)(3)(b) Waiver to Sidewalk Requirements A request for a Variance to sidewalk requirements, shall be approved if it meets all of the applicable criteria in Subsection (a) above and all of the following criteria:

a. The area is of low-intensity land use to an extent that the normal installation of sidewalks will not contribute to the public welfare, and the absence of a sidewalk will not create a gap in an existing sidewalk system extended to 1 or more sides of the subject property or area.

b. The City's right-of-way is insufficient in width to permit the construction of a sidewalk of standard dimension and placement, but there is sufficient right-of-way to meet minimum ADA or PROWAG guidance.

c. The adjoining sidewalks are non-standard as to width and/or location; and the Variance would enable the new and existing sidewalks to match in width and/or location, or could create a smooth transition between areas of different width and/or character.

Please let me know if this answers your question.



MAGGIE GOULD

planner

o 505.924-3910

e mgould@cabq.gov

cabq.gov/planning

From: Chavez, Richard G, NMDOT [mailto:RichardG.Chavez@state.nm.us]

Sent: Friday, October 25, 2019 4:04 PM

To: Gould, Maggie S.

Subject: DBR Platt & Related Docs for next Meeting

Maggie, hopefully I have submitted everything you need for review. I do have a City Surveyor signed Mylar that I will have for the meting.I do have some questions regarding the DRBs interpretation of my project which I have stated to the board in a letter to you. I'm sure you've had to deal with other confused and discouraged applicants, so I do appreciate everyone's patience with me and my project.

Richard G. Chavez

906 15th St NW\Albuquerque, NM 87104

505-934-5979

=====
This message has been analyzed by Deep Discovery Email Inspector.

**REQUEST FOR LOT LINE REALIGNMENT AND SIDEWALK WAIVER FOR
906 15TH NW**

I reside in the oldest sub-division in the city. The Perea Sub-division was established prior to 1900. I am requesting a Lot Line Realignment and a Waiver for sidewalk. The property in question was purchased in 1947 by my parents. This property is where I was raised and where I plan to retire. The property consists of two single dwelling residences, consisting of four lots for a total of 100' by 142' sq. ft. on the NE corner of the intersection of 15th and Granite NW. The second residence has a separate entrance on Granite. My current property taxes are \$6,500.00 and consist approximately one third of my monthly mortgage payment of \$1,697.00

The request for a Waiver is to allow the continuation of the Status Quo based on the following:

- The financial burden that will be required to cover the cost of sidewalk installation, not to mention the cost of submitting an application with no guarantee of approval.
- Over the years, the City has chosen to install sidewalks and lamppost at no cost to commercial or residential property owners along Mountain Road from Broadway. The City installed lamppost lighting, curb, gutter on properties with no existing curb, and gutter.
- From 15th & Granite to 15th & Mountain Rd, has no sidewalk until the end of the block where an attorney's office has approximately 30' to 50' of sidewalk as 15th merges with Mountain Rd.
- My neighbors, who have no sidewalk and do not intend to subdivide their properties and have no plans to install sidewalk along my street.
- The adjoining property east of the alley has a sidewalk that is non-conventional with 36" sidewalk and no easement.
- Sidewalks will not enhance the safety of my street as I have kept the sidewalk area free of debris, clutter and weeds for as long as I lived there.
- The area is a low-intensity land use to an extent that the normal installation of sidewalk will not contribute to the public welfare and the absence of a sidewalk will not create a gap in an existing sidewalk system extended to 1 or more sides of the subject property or area
- What sidewalks that do exist are non-standard as to width and easements and /or location. The Variance would maintain the status quo of the neighborhood. Of the four corners on my intersection, only one corner has a sidewalk and that does not meet current standards.
- Portion of existing fence on 15th approximately 50' was grandfathered in when storm sewers and curbing were
- The only consistency/standard about the sidewalks in my area or lack of, there is no standard. Throughout my neighborhood, you have whole blocks without sidewalk

PARCEL ID: 101305837530810901

LOCATION and LEGAL DESCRIPTION:

906 15TH ST NW
ALBUQUERQUE NM 87104
* 007 044PEREA ADDN L7 , 8, 9 & 10

CHAVEZ RICHARD GERARD

906 15TH ST NW
ALBUQUERQUE NM 87104

**2018 Property
Tax Summary**
NANCY M. BEARCE
TREASURER
BERNALILLO COUNTY
ONE CIVIC PLAZA NW, BASEMENT
ALBUQUERQUE, NM

(505) 468-7031

<http://www.bernco.gov/treasurer/>
e-mail: treas@bernco.gov

Today's Date JUL-05-19 03:53 PM

MTG COMPANY
FIFTH THIRD BANK
MTG COMPANY #
4457

Tax and Payment Summary

Year	Tax	Int	Pen	Fees	Paid	Due
1st half due	3,297.77	0.00	0.00	0.00	-3,297.77	0.00
2nd half due	3,297.77	0.00	0.00	0.00	-3,297.77	0.00
Total Due	6,595.54	0.00	0.00	0.00	-6,595.54	0.00

Sum of pending ONLINE payments not included above:

PreTax amount:

Total Due:

Assessor's Valuation	
Tax Year	2018
Assessed	421142
Taxable	140367
EXEMPTIONS:	
HOH	2000
VET	0
OTHER	0
Net Taxable	138367
Dist	A1AM
Rate	47.667
Class	RES
OvrClass	
Owner Type	

Tax bills are mailed November 1 of every year as required by state law. Taxes are due in two equal installments. The first half payment is due November 10 and must be paid by December 10 to avoid delinquency charges. Second half payments are due by April 10 of the following calendar year and must be made by May 10 to avoid delinquency charges.

PAYMENT COUPON

PLEASE MAKE YOUR CHECK PAYABLE TO
THE BERNALILLO COUNTY TREASURER
AND MAIL TO :

BERNALILLO COUNTY TREASURER
NANCY M. BEARCE
PO BOX 627
ALBUQUERQUE, NM 87103-0627

PRINT THIS PARCEL
NO. ON YOUR CHECK

101305837530810901

CHAVEZ RICHARD GERARD

1st half due	.00
2nd half due	.00
Total Due	.00



15A

AMOUNT ENCLOSED \$

18 510130583753081090100 0000000000 0000000000 0000000000



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

INTER-OFFICE MEMORANDUM

December 4, 2019

TO: Klarissa Peña, President, City Council

FROM: Brennon Williams, Planning Director *BW*

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 acre(s). (J-13)

OVERVIEW

An application for a Preliminary and Final Plat and Variance IDO was filed by the applicant on August 30, 2019. The application was accepted and scheduled for the meeting of September 11, 2019. The applicant received board comments and the case was deferred three times before the final meeting on October 30, 2019. The DRB denied the request for a sidewalk waiver at that meeting because of the location of the site in a highly pedestrian urban area and because the lack of sidewalk creates a gap in the sidewalk system making it more difficult to have good pedestrian connectivity.

The applicant appealed this decision on November 12, 2019. The appeal was filed in a timely manner.

HISTORY

The applicant met with staff prior to the submittal to discuss the requirements for the submittal. The applicant was told that he could request a sidewalk waiver, but it was unlikely to be granted because of the location of the property in the center of the City. Staff does not have an exact date for this meeting, but it was in the summer prior to the submittal of the application.

An application for a Preliminary and Final Plat and Sidewalk Waiver IDO was filed by the applicant on August 30, 2019. The application was accepted and scheduled for the meeting of September 11, 2019.

The applicant received comments regarding missing notes on the plat, lack of surveyor's signature and existing sidewalks from Planning Staff. Comments from Code Enforcement stated that a sidewalk should be provided. Comments from Transportation stated that the sidewalk waiver should not be granted and noted that the existing fencing is in the right of way. The case was deferred to the meeting

of September 25, 2019 to allow the applicant to address board comments. The applicant requested a deferral to the October 2, 2019 meeting to allow more time to address Board comments. The case was heard at the October 23, 2019 meeting and again deferred after extensive discussion, to address comments from Transportation regarding the sidewalk waiver, a clear site exhibit, and fencing in the right-of-way. At the October 30, 2019 meeting the DRB heard additional testimony from the applicant and the Transportation DRB member. The DRB denied the request for the waiver based on the IDO requirement for a 4-foot sidewalk in residential areas and the fact that there are existing sidewalks in the area that could eventually connect to the required sidewalk. The requirements would increase pedestrian and ADA access in the area.

APPEAL

The appellant cites the following as reasons for the appeal followed by Staff's response to the appellant's arguments. The full list of the appellant's arguments is contained in the appellant's application dated November 12, 2019 (included in the record).

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

The DRB denied the waiver of the IDO requirement 14-16-5-3(D)(1) for a perimeter sidewalk because the request did not meet all of the criteria in 6-6(L)(3), specifically, 6-6(L)(3)(b).¹ The request would maintain a gap in the sidewalk system because there are existing sidewalks to the east and south of the site, and, therefore, be contrary to furthering public safety and welfare. The area has a high degree of pedestrian activity and the sidewalk would contribute to a safe pedestrian environment.

The DRB expressed that they would accept a request for a waiver of the width of the sidewalk from the 4-foot wide requirement in order to match existing sidewalks in the area. Mr. Chavez was told he could submit a formal request for the width to the waiver along with information on proposed sidewalk width and distance from existing curb to the property line to demonstrate sufficient right-of-way. (Chapter 12, Current DPM) The applicant did not request a waiver to the width of the sidewalk.

The applicant's request was treated in the same manner as similar requests. The DRB has required sidewalks for similar platting actions. The IDO requires a perimeter sidewalk for residential property (14-16-5-3(D)(1)). Because the applicant is making a change to the property, the requirements of the IDO apply. While the applicant's property may not connect to a sidewalk now, as the area redevelops, more sidewalk can be installed creating a full network of sidewalks. The area has existing sidewalks in a mixed pattern. There are other areas of the city where there are no sidewalks at all. The sidewalk waivers granted by the DRB have been in areas where there are no existing sidewalks.

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

If any of the neighboring properties redevelop, the same requirements would apply to their properties that were applied to the applicant's property. The City requires compliance with existing rules for new development.

¹ The IDO provisions on sidewalk waivers were modified slightly as R-2019-035, See Exhibit A-1, 6-6(L)(2)(a).

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

As stated above, the applicant is making a change to the site and, therefore, the requirements of the IDO and current City requirements are applicable to the site. The revocable permit is required for any encroachment into the right-of-way. The other option would be to remove the fence altogether.

4. **The City should update the sidewalks using City funds or create a special assessment district as was done along Mountain Road and Lomas.**

The City creates a Capital Improvement Program to allocate funding for improvements. This is outside the purview of the DRB.

CONCLUSION

The Appellant does not show that the Criteria for an Appeal in Section 14-16-6-4(U)(4) of the IDO has been met. The Appellant has not offered evidence that contradicts the findings/action of the DRB. 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; and the DRB did act within its authority in applying applicable requirements.

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

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

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

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

6-6(L)(3)(b) *The Waiver will not be materially contrary to the public safety, health, or welfare.*

6-6(L)(3)(c) *The Waiver does not cause significant material adverse impacts on surrounding properties.*

6-6(L)(3)(d) *The Waiver will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.*

6-6(L)(3)(e) *The Waiver will not conflict significantly with the provisions of any city, county, or AMAFCA adopted plan or policy, this IDO, or any other City code or ordinance.*

6-6(L)(3)(f) *The Waiver will not allow, encourage, or make possible undesired development in the 100-year Floodplain.*

6-6(L)(3)(g) *The Waiver will not materially undermine the intent and purpose of this IDO or the applicable zone district.*

6-6(L)(3)(h) *The Waiver does not allow a lot or type of development that does not meet the applicable size, area, and development standards applicable in the zone district where the lot is located, unless a Deviation to such standards is within the thresholds established by Subsection 14-16-6-4(O) and is granted by the DRB as part of this approval.*

6-6(L)(3)(i) *The Waiver approved is the minimum necessary to provide redress without being inconsistent with the provisions of this Section.*



CITY OF ALBUQUERQUE INVOICE

906 15TH ST NW

Date: 8/30/2019
Office: ANNEX
Batch: 10630
Cashier: E41709
Tran #: 14

I-00288
I3932

Building Permits
Station ID
Office ANNEX
Receipt #: 00591813
Reference VA-2019-00288
Trans Amt: \$825.00

Description	Amount
ication Fee	\$275.00
itated Meeting Fee	\$50.00

30 Building Permit \$325.00
Payment Total: \$325.00

Total due for this invoice: **\$325.00**

Building Permits
Station ID
Office ANNEX
Receipt #: 00591814
Reference SD-2019-00158
Trans Amt: \$825.00

http://posse.cabq.gov/posse/pub/lms/Default.aspx
30 2nd St. NW, Albuquerque, NM 87102

30 Building Permit \$500.00
Payment Total: \$500.00

Transaction Total: \$825.00
Cash Tendered: \$840.00
Change Tendered: (\$15.00)

Side walk Waiver
FEE

Thank you for your payment.
Have a nice day!

IE BOTTOM PORTION OF THIS INVOICE NOTICE WITH PAYMENT

Untitled Map

Neighbors to north where sidewalk would come to an end at their tree. They're not going to install sidewalk to wrap around the tree

Legend

906 15th St NW

21A



Google Earth

© 2016 Google

Untitled Map

Existing Gap in accessible sidewalk between neighbor and my property. Alley Entry Between Neighbor on east side and my property. S

Legend

906 15th St NW



©2013 Google

Google Earth



22A

CITY OF ALBUQUERQUE



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

February 13, 2020

Richard Chavez
906 15th Street NW
Albuquerque NM, 87104

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 15th ST NW and Granite Ave NW, containing approximately 0.32 acre(s). (J-13)

Staff Planner: Jolene Wolfley

PO Box 1293
On February 13, 2020 the Environmental Planning Commission (EPC) voted to deny this Appeal.

Albuquerque, NM 87103
APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **February 28, 2020**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th 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

23A

OFFICIAL NOTICE OF DECISION

Project #2019-002811

February 13, 2020

Page 2 of 2

BW/CL

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



**Environmental
Planning
Commission**

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

Staff Report

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



CITY OF ALBUQUERQUE

Planning Department

Mayor Timothy M. Keller

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 15th 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 2nd 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.¹

¹ 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.

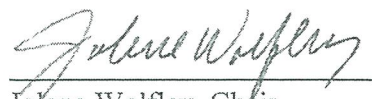
4. **Appellant: The City should update the sidewalks using City funds or create a special**

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.


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 15th & 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)

DPM - Chapter 12 - Sidewalk Variance

(Highlighted items are color coded to show overlap of DPM and IDO)

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.

The mayor "may" give a variance: Subject to site development plan review.

- a. Subject to site development plan review.
- b. Maintain or develop a design plan not consistent with uniform sidewalk installation.
- c. Historical significance and variance needed to maintain significance.
- d. Low intensity land use and sidewalk will not contribute to the public welfare.
- e. Insufficient right-of-way to permit the construction of a sidewalk.
- f. A sidewalk variance would preserve trees.
- g. Pre-existing obstructions that cannot be easily relocated or should not be altered.
- h. Adjoining sidewalks are non-standard as to width and or location.
- i. Mature landscaping would be damaged to degree it outweighs public utility of sidewalk.

IDO 6-6 (L)(3) – Variance to DRB – Page 406

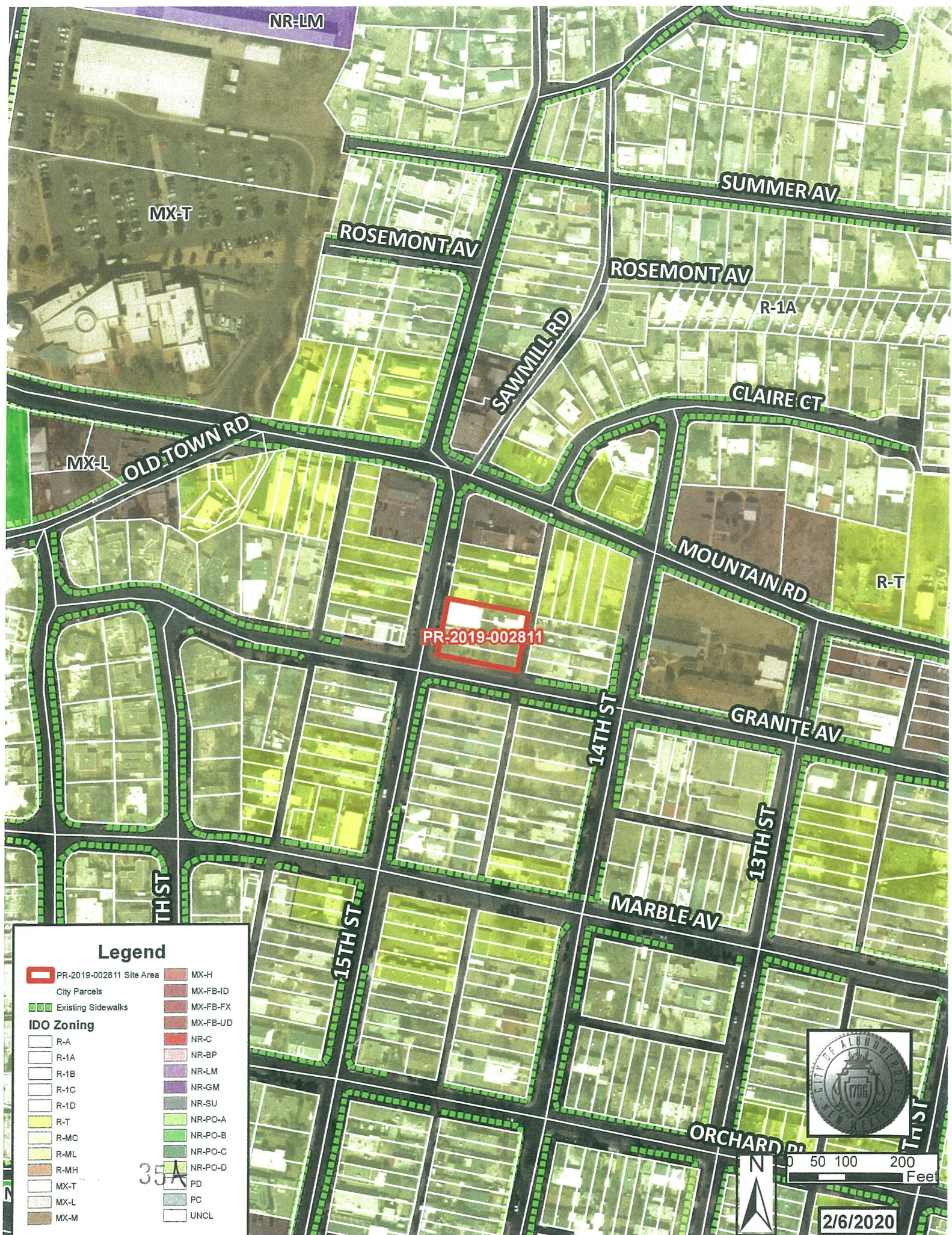
1. Any of the following applies
 - (a) Special circumstances- hardship that is substantial, topography, etc.
 - (b) Pre-existing obstructions.
 - (c) Historical significance, variance is needed to maintain this.
 - (d) Established neighborhood character or landscaping would be damaged to a certain extent.
 - (e) Variance would encourage flexibility, economy, etc.
2. Not contrary to public safety, health or welfare.
3. No significant material adverse impacts on surrounding properties
4. Will not hinder future planning, ROW acquisition, building public infrastructure.
5. Will no significantly conflict with adopted plans, ordinances, codes.
6. Will not encourage development in floodplain.
7. Will not undermine the intent of IDO or zone district.
8. Will not allow a lot that does not meet IDO standards.
9. Variance is the minimum necessary to avoid hardship.
10. Variance for sidewalk requirements meets criteria below: 6-6-3(L)(b).

IDO Section 6-6-3(L)(b) – Page 409

Variance to Sidewalk Requirements was Eliminated by R-19-150

- 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.
- B. City's right-of-way is of insufficient width, but sufficient right-of-way to meet ADA or PROWAG.
- C. Adjoining sidewalks are non-standard as to width and/or location. Variance would allow sidewalks to match in width.





NR-LM

MX-T

ROSEMONT AV

SUMMER AV

ROSEMONT AV

R-1A

SAWMILL RD

CLARE CT

MX-L

OLD TOWN RD

R-T

PR-2019-002811

MOUNTAIN RD

GRANITE AV

14TH ST

13TH ST

MARBLE AV

ORCHARD RD

Legend

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



0 50 100 200 Feet

2/6/2020

CITY OF ALBUQUERQUE
CITY COUNCIL

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

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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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

January 16, 2020

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.

CHAIR SERRANO: We'll go to agenda item # 1, Ms. Wolfley.

MS WOLFLEY: Chairman Serrano and Commissioners. I think this is an appeal hearing so if the appellant has 10 minutes first, correct? Okay, so I'm going to let the appellant start and have their time and then staff will come and respond to that.

CHAIR SERRANO: Good morning.

MR CHAVEZ: Good morning. On the agenda it says staff is supposed to go first and then the appellant.

CHAIR SERRANO: Well before we start, are you the appellant?

MR CHAVEZ: Yes, yes.

CHAIR SERRANO: Okay, state your name and address for the record, please.

MR CHAVEZ: My name is Richard Chavez. I reside at 906 15th Street, Albuquerque, New Mexico 87104.

CHAIR SERRANO: Please raise your right hand, do you swear to tell the truth under penalty of perjury. Okay Ms. Wolfley you have something?

MS WOLFLEY: I just wanted to let Mr. Chavez know he will have time for rebuttal after his testimony. So, you'll have another chance (Inaudible).

MR CHAVEZ: So, thank you for taking the time today. I want to thank whoever put this agenda together. Because the title for my appeal is appealing of a variance. This is just an example of the dysfunctionality that I've been dealing with from the very beginning and dealing with my particular application. I never at any point time ever ask for a variance. When I came before the staff to see what I needed to do to apply. I came in asking for a lot line adjustment to consolidate 4 lots to 2. That's all I wanted to do. Okay. So, when I came the staff all of a sudden, I found out here's the application, oh, by the way, you're a subdivide and you're a developer, and I, that was confusing to me because I was just asking for a lot line adjustment and I didn't understand why these other regulations were being called upon me.

I'm not attorney, I'm not a professional developer. I'm a tax payer I own property and when I came before this, before the Planning staff and DRB I thought this would be a fairly simple process. A) do you have any adjoining sidewalk that that you would be able to attach to, to create a continuation of this system on your street. No, that should have been a pretty simple answer to my request. If I created by, if my application created a gap in which I get filled to, for a continuation from one end of the street to the other. I could accept that. But the problem is that that's not the case. So, when I came before the staff, I was told I had to apply for a variance or a waiver depending on which one I wanted to do. When I was explaining the difference, I said I would like to prefer to request a waiver because I do not want to put sidewalk in it was explained to me that a variant was just a variant on the width of the sidewalk. I do not want to put sidewalk

in because there is no sidewalk on either side of the street for the whole block on my particular Street. So, the options that were given was to apply for a waiver or apply for a variance. So, in the process I pay the fee for a waiver on the sidewalk the fee was for a waiver on the sidewalk not for a variance. And from the very beginning of this process staff has directed me, pushed me try to control me into applying for a variance and I that was not what I wanted to do. So, the fact that I'm appealing on this agenda an issue that's called a variance is really disingenuous because I have never applied for that, never asked for that, never wanted that.

I started this process on 9/11. Okay, and here we are February 13th, and we still don't have a decision and part of it is because some of the delay is on my part which was a matter of not being able to get the kind of information that I needed for my application. Part of the delays been on the staff's part. I went before the January 7 hearing expecting to go before the hearing officer that morning. I was told at meeting that it was going to be canceled and It was going to be because it was the wrong jurisdiction. That I had to go before EPC. I don't think the staff found out five minutes before that meeting if that was the case, but I was never notified prior to that meeting.

Part of the problem that we have with this, the problem that I'm having with this application is that they considered me a developer and that my project was a development. I had nothing to do with development and on page 456 of the IDO. There's a definition of development which none of what I met what I was doing met that definition. So, then the question became what about the subdivision issue. Well state statute, chapter three municipalities Section 3-20-8 alternate summary procedures B (1) B re-subdivisions where the combination or recommendation of portions of previously padlock is not increased the total number of lots. That should be a process that you have to find within your ordinance and you don't. And so, what happens is it creates this arbitrary process by which the DRB basically starts coming up with these arbitrary decisions. Point example, the traffic engineer provided three recommendations on their review of my application. First one was, that there was plenty sidewalks in the area and there was no need for a waiver. I was stunned because if you look at Google Earth within one block, there's a series of streets that don't have side walk one block from my house. From two blocks going north towards 15th around the museum east of the museum. There's no sidewalk. And so, when I presented that before the staff, they had to acknowledge that was not the case that that statement never went forward. The other statement was that by installing sidewalk it would create a, it would enhance safety. The question I have is whose safety is it going to enhance? First of all, if you're an individual with a disability on wheelchair or a walker, now I have an accessible corner. Which mine would be the only one in the intersection that an individual could get onto my sidewalk. Now going north, they have, they have the, I don't know where the safety part comes in because at the end of my property the sidewalk ends, and it ends into the tree of the neighbor. So, if you're in a wheelchair in a walker and you're trying to get off that sidewalk, you have no egress that's handicap accessible off that sidewalk going north going east the same thing except it's an alley. So, in that alley you have is an asphalt dirt alley that you have no transition off the sidewalk, into that alley into the next side walk that would be traversable by somebody and wheelchair or a walker. So, that did not matter to DRB staff because they said now we're going to have you do this anyway, but here's the thing against me. What about the legal liability that I have to face because now staff, or the city is required me to put in the sidewalk that has won't

egress off it and the first time an individual in a wheelchair or in a walker stumbles and falls trying to get off at sidewalk. Who are they going to sue the city? No, they're gonna be suing me the property owner. So, what the DRB has created for me is a legal liability that the cost doesn't just stop with the installation of sidewalk. So, in trying to go through this process what I came to find out was even if, even in asking for a waiver there was no criteria for a waiver all the criteria that I was being referred to was regarding the variance criteria. The specific area, the chapter of the section of the idea was 14-6-6-6 (3) in that there was only, there was, there was the, there was three areas within code enforcement that I had to meet all three of those areas. Okay. Well, it's almost impossible to meet those three. I met two of them, but then I come to find out that there's a whole introductory chapter to the variance ordinance the staff never bother to present to me. They didn't present it at all. I located that on my own, and the introductory chapters there is nine variables that if you qualify for you get an exemption to the variance. In my simple mind, I kept thinking waver, wavier, wavier. It wasn't a wavier it was a variance. It was the introductory chapters and variance. So, when I presented that to staff I asked them, why was I not given this information? They could not answer me. They even asked legal for her input. She said you need to sit down and discuss this. So, I'm wondering okay if in fact you wanting me to put in a waiver for a variance then why don't you give me all the information related to that variance request that did not take place.

The other issue that I find really hard to understand is the lack of consideration for the financial burden that is being placed on an applicant for this particular process. You know, what do you do, if you're a veteran unlimited income and you're trying to go to sponsor you cannot even afford the application process. I'm already into this application process to the tune of over \$1000. I should not have had to pay more than \$500 to assess the lot line adjustment period. I never should have had to request a waiver. I should never had to gone through this appeal process and incur the kind of cost that I do. Can somebody tell me how much time I have?

CHAIR SERANO: You have as much time as you need.

MR CHAVEZ: Oh, thank you I appreciate that. So, you know, I asked the question I never got to answer to it. Why do you not give this information out to every applicant that's applying for a variance? To this day I have not been given an answer to that question. Because to me in that chapter there's nine variable that they... of only one was in that 16-3 – whatever they gave me. That was only one of the nine variables but they never provided the information on the other eight variables.

One of the one of the other issues, so in the cost of my application of what I would have to do I look at about \$16,000 in sidewalk cost that had to do with two drive pads, a corner accessible, a handicap corner and traffic control. And so, to me that's a pretty expensive investment because currently right now my property taxes at \$6,500 year constitutes about a third of my mortgage payment. With the cost that I would incur by having to put in sidewalk my property tax also approximately 46% of my mortgage payment. So, it's a significant in cost for me.

I guess in conclusion what I find, A) that there was no process either for a waiver or for a lot line adjustment. State statute specifically cause for that process. It's not within the ordinance of the of

the sidewalk or what the, what staff uses to determine. But when you do, when you have this gray area, it creates a lot of arbitrary statements and decisions and that's why I feel that I've been dealing with through this whole process. The other issue about safety, because one of the issues that traffic engineering said was that I was within the right-of-way, within the setback of the city, and I need to remove my fence and remove that 15 feet from the street, although for two blocks. Everybody is in that same boat on between 15th, between Mountain road and Mable on 15th. For two blocks everybody's in the same boat. And the reason for that was in the early 60s, I grew up on this block in the early 60s the city late 50s early 60s the city came in and put storm sewers throughout the entire street. My folks had to pay an assessment team to the curb and sidewalk that was installed at that point in time, and because of that it basically grandfathered in all the property lines for up to the two blocks beyond that actually but my immediate two blocks. And so, in this process, what the Planning director said on the news regarding this case, was that when you come into the process it triggers this whole process because you're asking for a status change to your property. I said, okay, I can understand that but why just somebody's looking through a lot line adjustment. Perfect example across the street from me there was an old building, I mean old houses dilapidated it was purchased for approximately 60 to 80,000 by a contractor he fixed it up sold it for about a hundred and sixty sold it to another couple in 2018 it sold for \$268,000 no sidewalk put in there. Now this was taken a really torn down piece of property renovating it and no requirement for sidewalk. So, the developer made out big bucks didn't have to put a sidewalk in as far as renovating. There's another property about three houses down, two houses down it's vacant right now. They can put in the five story whatever never have to put in sidewalks because they're not asking for the sub-divide. So, to me, it's just kind of inconsistencies, the lack of a process, the timeframe that I've had to endure to get this thing approved, and the cost to me because every time I've had come before this board, I have to take time off. I work in Santa Fe, so I can't just take one or two hours off to come before this board. I've expended over 20 hours in leave trying to address this issue.

CHAIR SERRANO: Excuse me. Mr. Chavez. I think we got your point because we're starting to be redundant in what we're saying. If you have anything new to add now would be the time but if not, just so you're aware after staff presents their portion of the case. You're free to come up for rebuttal under our rules. What I would suggest you do is while you're listening to this make notes of your rebuttal questions, and then we'll submit them and then we'll see which of your rebuttal questions are relevant to what we're doing because sometimes people come up with questions that have no bearing whatsoever. Okay. So, before you leave Commissioners any questions? Commissioner Hudson.

COMMISSIONER HUDSON: Thank you. Mr. Chair. Good morning. Mr. Chavez quick question. Do you consider your property in like a highly pedestrian-friendly urban walkable area?

MR CHAVEZ: I would and the reason for that is because whenever Tiguex park has some activity going on or there's something going on in the old town area. Yeah, there is a lot of traffic. I get a lot of foot traffic but amazingly in all these years, there's never been one fatality one accident for a pedestrian or illegal in that area for all those activities that took place. So

again, the enhancement of safety to me is irrelevant because it's already safe. There's never been an accident in that particular area.

COMMISSIONER HUDSON: Thank you. One other question is the main reason that you don't want to put the sidewalk in because of the cost?

MR CHAVEZ: That and the legal liability that you're placing me in. Because there's no extension. There's no continuation of the sidewalk beyond me. And when you're, what I was told by a traffic engineer, that if you're really serious about enhancing the safety you go from one end of the block to the other end of the block so that a person in a wheelchair or Walker has complete access ability from one end of the street to the other. That's not the case.

COMMISSIONER HUDSON: Thank you.

CHAIR SERRANO: Thank you commissioner Shaffer.

COMMISSIONER SHAFFER: Just one quick question. What in this my just so I have for further information. What's the purpose of your subdivide request?

MR CHAVEZ: I have two houses on the property. My folks bought this property in 1947. I built a second edition in 2004 and I would like to split the property because I'm getting point to I'm getting close to retirement and I would like to live in a mortgage free environment.

CHAIR SERRANO: Commissioners anything else? I just have one question Mr. Chavez. You indicated that when you came in to begin this process you were advised what would be triggered?

MR CHAVEZ: Correct.

CHAIR SERRANO: So, you chose to continue right?

MR CHAVEZ: I did.

CHAIR SERRANO: Okay.

MR CHAVEZ: I had no choice.

CHAIR SERRANO: Right, okay. I just to, thank you. Commissioners nothing else? Okay. Thank you, Mr. Chavez. Mrs. Wolfley.

MS WOLFLEY: Good morning, Chair Serrano and members of the commission. My names Jolene Wolfley, I'm chair of the Development Review Board, and Jeanne Wolfenbarger is here. She's the traffic engineering manager and she will be giving a part of this presentation as well.

So, I just wanted to let you know that Mr. Chavez the applicant came in and he did discuss with staff the requirement, If you're re-platting he's taking 4 lots and making them into 2 that you do

trigger all the IDO requirements if you're making a change of use on your property, and that it be he, they talked to him about putting the, this would trigger putting in a sidewalk. Given the location of this property. It was unlikely he would be granted a variance to the sidewalk requirement. There's been discussion with him about considering a narrower sidewalk to match some of the other side walks in the area, but he chose to proceed with asking for the complete variance or not installing a sidewalk at all.

So, generally the application came in for a sidewalk variance with his plat application. This was reviewed at four meetings. There were various exhibits and things that were lacking in the application staff worked pretty intently with him in these four hearings to try to discuss his situation of what he needed and ultimately the DRB denied the sidewalk variance and this means that his plat application is on hold until this matter is determined. The applicant appealed and initially we sent the application, the appeal to the LUHO. Everything that the DRB has that's appealed goes to the LUHO. We didn't realize that there was a provision that had changed in May where there were various changes made to DRB processes in the IDO. It was a temporary change, and the DRB staff did not realize that that provision about a sidewalk variance had been taken out of IDO. And what that effectively meant is that the governing provisions are in the DPM the Development Process Manual, and that said that if someone appeals a sidewalk variance of any sort and the EPC is the appeal body, and that's our current governing document. So, the LUHO, City Council both took action to reassign this appeal to you as the EPC. So once again, this is the provision of the IDO that talks about when you make a change to your property you trigger. Let me have Ms. Wolfenbarger come in and talk about the details of how the case was reviewed. And I should just mention that in this case variance is kind of with a small v. It doesn't use the all of the ZHE criteria for a variance. It uses the DPM or the Development Process Manual listing of items for a variance.

MS WOLFENBARGER: Good morning. I would like to point out that Mr. Chavez had a very elaborate explanation for the variance that he presented. Based on DPM criteria, which is what I used in side-by-side with the IDO to determine whether or not we could grant his request. And first of all, I went through a series of the criteria, if you point the next page where we have that criteria listed. I don't know if anyone can see that. There is, we had put together a comparison of what the IDO had shown versus the DPM and much of the criteria is quite similar. It does talk about historical significance, low intensity pedestrian use, obstructions Etc., and based on this criteria. We had evaluated and determined that this area first of all most particularly is not a low intensity and having a sidewalk would contribute to the public welfare. We realize that there are there are still a few gaps and the neighborhood, but much of the neighborhood does already have sidewalk and we do agree that there are some areas that don't have ADA compliance, but we try to work with these applications that come in. You know, these re-platting to get sidewalk put in in front of people's property. Because our job as part of the DRB is to enhance Public Safety by making sure we have the correct vehicular pathways as well as pedestrian pathways. So, this area was determined not to be a low intensity as was already mentioned. There's some pedestrian use quite a bit of pedestrian use based on the fact that it's in the old town area. And therefore, we do think it will contribute to the public welfare. And there also is some connectivity, and now i'd like to go to the map that (inaudible) so graciously prepared.

On the, on the screen we have a map that shows Mr. Chavez property at the northeast corner of 15th and Granite. And what we did is we use the aerial to show where we actually do have some sidewalk. The sidewalk is digitally created by the GIS program and it's represented by a bunch of green dots as to where we have actual sidewalk. And as you can tell yes indeed, there are some gaps throughout and obviously because it's an old area there are areas where it's not ADA compatible. However, providing a sidewalk along the south side of the property will tie into the sidewalk to the east. Yes, it's noted that there's an alleyway in there that's not quite ADA compatible, but it'll provide some continuity there, even though the alleyway itself is not ADA compatible. They'll be a connection to the south on 15th street if you'll note their sidewalk continuing south to the north we realize there's a gap there. There may be obstructions to the north such as trees, but we had advised that if there's trees in the way we were willing to look at a variance from the standard with four feet as well as you know suggest future sidewalk easement for neighbors to the north in case at such point that anyone would come in with an action where we would also ask those people to build sidewalk and at some point, you know, it's also possible that the city might come in and fill in the gaps, although that's not as likely. So, we try to take those things into consideration when looking at the sidewalk variance. I do look at sidewalk variances. Sometimes people will submit to me as part of a Planning action, or Building permit action in instances when I have allowed variances, they typically involve well-developed cul-de-sacs with very low pedestrian use and no established sidewalks. There's nothing to connect into its well-developed, and its low pedestrian use, so I did want to also point that out. So, thank you.

CHAIR SERRANO: Thank you. Commissioner any questions? Commissioner Eyster and then commissioner Meadows.

COMMISSIONER EYSTER: Thank you chair. Thank you, Ms. Wolfenbarger. The IDO, could you please characterize what the IDO, how the IDO looks at sidewalks? What's the IDO trying to accomplish citywide with sidewalks?

MS WOLFENBARGER: So, in this particular case, because we're referring to the DPM in this case. The DPM is the established document to look at variances that is what we are concentrating on. The IDO itself does point out to items such as the City engineer, can ask for improvements along the frontage of a property, that's being developed. In this case there may not be actual development. But there is subdivision and DRB does take that into consideration, and the IDO does point out that the DRB looks after ADA and development of pedestrian ways and vehicular ways.

COMMISSIONER EYSTER: So, the Design Process Manual does charge the DRB with looking after ADA standards?

MS WOLFENBARGER: Correct.

COMMISSIONER EYSTER: And what are the various actions that can result in having to build a sidewalk in addition to a replat?

MS WOLFENBARGER: Other decisions that we make beyond sidewalk or?

COMMISSIONER EYSTER: Like Mr. Chavez said that there was building on in the area. They had maybe building permits I assumed but they didn't have to do sidewalks so building permit maybe does not require that?

MS WOLFENBARGER: Now being in this position for only six months. I haven't seen any applications for that particular area, but in my experience in reviewing what's been done in the past typically sidewalk variances have been granted when there's low pedestrian traffic or.

COMMISSIONER EYSTER: That's not quite what I'm trying to learn. He is, was required to build a sidewalk because he was doing a plat of re-plat I think. Are there other people who have other requests that are also required to go ahead and build the sidewalk?

MS WOLFENBARGER: Yes, they are.

COMMISSIONER EYSTER: What are those other kinds of situations?

MS WOLFENBARGER: Well commercial areas, and residential areas, all types of uses. Our typical reaction to someone coming in for platting action develop an action. Is to request that sidewalk. Because it is listed in the DPM, as well as the IDO to put the sidewalk along the frontage.

COMMISSIONER EYSTER: Thank you.

CHAIR SERRANO: Thank you, Commissioner Meadows.

COMMISSIONER MEADOWS: Good morning. So, a couple things I wanted to clarify one is because we heard about waivers versus variances. So, a waiver would be if the appellant was trying to, requested to build a narrower sidewalk that was in line with the other existing sidewalks in the area as opposed to variance, which is not to build a sidewalk at all. Is that Correct?

MS WOLFENBARGER: If you would you like to elaborate on that?

MS WOLFLEY: Chairman Serrano and Commissioner Meadows. So, currently if you want to not install a sidewalk or you want to install a narrower sidewalk then is the standard it's a variance through the DPM and that's why I said variance with a small v.

COMMISSIONER MEADOWS: Okay, and what would a waiver entail?

MS WOLFLEY: So, I have this slide up here and in May of 2019 the city council did a temporary change to the IDO. Because in the IDO had listed this as a variance if you didn't install a sidewalk, it was a variance and then in May of 2019 the city council did a temporary measure until the annual update cycle to change many of the DRB things to waivers and they

actually removed the sidewalk variance language from the IDO. DRB staff was working under the impression that they had changed variance to waiver because that's what they did with a lot of the DRB actions that they left they were waivers. And so, Mr. Chavez is right there was some communication with him calling this a waiver at one point, and as we proceeded through the appeal stage, that's when we realized that this provision about a sidewalk variance was eliminated completely it wasn't just changed to be a waiver but it is in the DPM as a variance. And what we were wanting to show you this slide in your packet is that the top part has the DPM Process Manual sidewalk variance criteria that was used to evaluate this and the bottom part is what was in the IDO as a sidewalk variance, And I've color-coded these so you can see what's yellow in the DPM is yellow in the IDO and green goes with green. And this is to show you that Ms. Wolfenbarger per practice in this kind of transition period is to use both IDO and the DPM and just evaluate the different criteria. And even though that bottom part isn't in effect right now. It's the top part that's an effect. It shows that the same basic elements were being reviewed on this request.

COMMISSIONER MEADOWS: And one other question, so we heard that all different kinds of platting actions would trigger the requirement for sidewalk does a building permit trigger the requirement for sidewalk?

MS WOLFENBARGER: Yes, it does.

MS WOLFLEY: This is our City Engineer Shahab Biazar I'm not sure he was here when we were sworn in.

CHAIR SERRANO: Just state your name.

MR BIAZAR: Yeah Shahab Biazar, City Engineer. Mr. Chair and Commissioner Eyster. Actually, a provision was, a section was added to the IDO to address that issue because I did get in trouble for not enforcing sidewalks right away dedication on plotted lots. One of the counselors approach me and basically chewed me out for that very reason. Where we had a project in (Inaudible) acres that was getting developed at the corner of Barstow and Alameda, and future Alameda was supposed to be going right behind that house. So, and I was told by that right of way wasn't dedicated, and why we're not requiring sidewalk. I told Mike truly I didn't find any way to enforce that. So that specific language was added to the IDO under subsection 17, 1-7 B to enforce that. So basically, it allows the city engineer to require any improvements fronting any plotted lots even when they come through building permits.

COMMISSIONER MEADOWS: Okay. All right. Thank you.

CHAIR SERRANO: Commissioner Shaffer.

COMMISSIONER SHAFFER: Thank you char. I don't know if this is appropriate at this time. I was going to ask Mr. Brito to if you could can you put up on the Google Map Google Maps that intersection on the screen? The 15th and Granite, unless Ms. Wolfley wants to do it.

MS WOLFLEY: While he's doing that I just wanted to mention that you just went through annual updates to the IDO. And in that you were dealing with this temporary provision and making it permanent and it would restore this sidewalk criteria that you see on the bottom and when that happened then what's on the top would go away. But currently were legally governed by what's on the top.

COMMISSIONER SHAFFER: Thank you, and I did I understand from testimony when you were speaking that there's a member of the city legal from that is familiar with this case here? Because I'm actually ask her.

MS WOLFLEY: Yeah let me introduce Nicole Sanchez, from the Legal department, and she's counsel to the Development Review Board.

COMMISSIONER SHAFFER: Thank you. Good morning.

CHAIR SERRANO: Excuse me, we did swear you in right?

MS SANCHEZ: I'm an attorney, so I have an attorney's (Inaudible) but I'm happy to swear in.

CHAIR SERRANO: We swore in pastors we'll swear in the attorneys. Do you swear to tell the truth under penalty of perjury?

MS SANCHEZ: I do.

CHAIR SERRANO: How come everybody uses attorney as a way to get out of being sworn in.

MS SANCHEZ: Because it is a long process.

CHAIR SERRANO: That's scares the heck out of me, but nonetheless state your name.

MS SANCHEZ: Nicole Sanchez.

CHAIR SERRANO: Okay. Commissioner Shaffer.

COMMISSIONER SHAFFER: What I need to ask is relevant to Mr. Brito getting that on the screen, but in reference to Mr. Chavez question, and I have several questions as you go down that street and a lot of legal question, a lot of legal questions about whose responsibility is what to his question of saying there's a tree at the end of the street someone in a wheelchair falls off his brand-new curb his brand-new sidewalk trying to get around that tree. Who's in your opinion, who's, whose responsibility is that what that was now put into place?

MS SANCHEZ: I would ask Mr. Varela, I believe that would be city liability. However, we're not addressing the property to the north at this time. We're only looking at the subject site

COMMISSIONER SHAFFER: I understand.

MS SANCHEZ: Is that your understanding Mr. Varela, that the city would be liable because it is city right-of-way?

COMMISSIONER SHAFFER: And that was where I was headed with that, because it's they're requesting the request from the city is telling the applicant that they have to put in a sidewalk to accommodate city services, correct? It's a city service to create the ADA compliance of the of the right-of-way.

MR VARELA: It's a component of public infrastructure. However, it would be located on private property.

COMMISSIONER SHAFFER: Located on private property which would open potentially open um up the medication as well and a joint suit.

MR VARELA: That would not be eliminated possibility.

COMMISSIONER SHAFFER: And my question to this and I guess if Mr. Brito can't get it up. If you go to the get the screen up Google Maps. We do it in all the other ones. All right. So, if you can kind of spin around there to the other corner. There's the City of Albuquerque stop sign right there on the corner. Percent that's on that person's private property supposed according what we're talking about, but it's a City of Albuquerque stop sign. So, someone in a wheelchair is coming down the sidewalk falls off the curb who's legally responsible for that lawsuit at that point that we've created this public infrastructure.

MS SANCHEZ: In my opinion it would be the City of Albuquerque, because it's on the city right-of-way.

COMMISSIONER SHAFFER: And then you go to the right-hand side. Where we have nothing and that continues down that street all the way around you go to the other side. There is literally no, back out just a little bit. There are no sidewalks on the street. I understand the point of creating continuity, which is extremely important, but I just don't you know, opening up someone to a legal can of worms on this when there is no further continuity. I'm not sure it is the right thing that you understand the process as you see in the sidewalk. I know you noted on your map that there's gaps in the alleyways, but they're yeah, there's no ADA compliance anywhere in this neighborhood whatsoever. So, I'm just my guess my question and what for us to ponder is that this is the right thing for this forcing this person to do? I know we have to follow the processes, but I just I wanted to bring that point up that Mr. Chavez brought up of him getting sued for going into a dead end and someone having to get off of his property onto the under the right-of-way.

MS WOLFENBARGER: I might like to add that we are asking him to put sidewalk within public right-of-way. Where there's plenty of room so none of the sidewalk would actually be on private property. So, I did want to point that out.

COMMISSIONER SHAFFER: Ok. Thank you.

CHAIR SERRANO: Commissioner Eyster.

COMMISSIONER EYSTER: Just for a dialogue with Commissioner Shaffer and with the witnesses, Ms. Sanchez and also, Mr. Varela. So, sidewalks generally are on public property. In my neighborhood. I know my property line is several feet inside the sidewalk at sidewalks on city property. So, I wouldn't I wouldn't be sued if someone were hurt on that sidewalk, is that correct, you think?

MS SANCHEZ: Chair, Commissioner Eyster, that is correct. The property owner could be named in a suit, but the liability would likely fall within the city.

COMMISSIONER EYSTER: Okay, I understand now. Thanks.

CHAIR SERRANO: Commissioners anything else? I just want to be clear. I just want to be clear. So, with respect to this particular property, you're asking the applicant or appellant to put a sidewalk to meet the DPM on public right-of-way.

MS SANCHEZ: Chairman that is correct.

CHAIR SERRANO: Commissioner Hollinger.

COMMISSIONER HOLLINGER: Thank you, Mr. Chair. So just to clarify a few things in regards to the section to the north of Mr. Chavez's property where the sidewalk would be on the responsibility of the other homeowner. That potentially would not be installed. How would the sidewalk end so if someone was traversing across that sidewalk, how could they transition to get back to the street with that just come to a dead end. Is there a potential that person could fall off? Just so I can better understand how that works.

MS WOLFENBARGER: Well obviously you know there's some gaps obstructions that would have to be looked at for any further construction of sidewalk. I think in this case it looks like there's some trees in the lay but we would work with the property owner to maybe look at options like a for instance the width of reduction or sidewalk easement or if that doesn't work, they would have to remove some of those obstructions or trees it possible that you know, if that might dead end but as these applications come in we're trying to fill in the gaps for the sidewalk. Generally, and hopefully at some point in time whether it be through applications or through a city project the whole network would be completed. Especially for an area that's high in pedestrian traffic.

COMMISSIONER HOLLINGER: I understand. If I may I have a second question as well in Mr. Chavez's request for appeal. He noted that other sections of the city had City assistance in building sidewalks. Are there any options for him in terms of that?

MS SANCHEZ: Chairman, Commissioner Hollinger. It is my understanding that the city has the ability to fund sidewalks through the Capital Improvements Program. However, you refer to the staff memo. That process is just outside of the DRB, to determine whether sidewalk funding or the project scope for building additional sidewalks.

COMMISSIONER HOLLINGER: So, in short, the answer is no?

MS SANCHEZ: It would go through the Capital Improvements Program.

COMMISSIONER HOLLINGER: Thank you.

CHAUR SERRANO: If I could follow up on commissioner Hollinger's question. I think where you might be going with it was if the appellant or anyone were to put a sidewalk in that probably have to go off the grade of the top of the curve, right?

MS WOLFENBARGER: Correct in most circumstances as you can see along here the right-of-way a little bit narrower. So, in such a case, we would build it adjacent.

CHAIT SERRANO: I mean, you won't want to go above or below the curve Correct.

MS WOLFENBARGER: No, it would have to be flush with the top.

CHAIR SERRANO: Correct. So, if we could go back to that page 9 that we add up. Thank you. It states at the top that the general sidewalk design criteria promote mobility safety and comfort for the pedestrian and allows adequate pedestrian access to a budding properties. I'm just going to play devil's advocate here. But the appellant comes in and puts in a sidewalk on his portion per the requirements set forth. He's using the top of the curve as the grade the abutting properties are now below the grade of the sidewalk even if it's one or two inches. Someone's walking, it's night they're handicapped, they're in a wheelchair, they're just even jogging. And you just trip over that, one or two inches that's the grade variance from the non-sidewalk to the sidewalk. Would that not create a, would that not go contrary to promoting mobility safety and comfort for the pedestrian?

MS WOLFENBARGER: Well the sidewalk we would be asking for would have to be flush with sidewalk and dry pad. So, the sidewalk that were asking to be built itself would be inspected to make sure there's no tripping hazards. But you're correct and stating that outside of that area there's possible somewhat of a gap once you go from sidewalk to no sidewalk.

CHAIR SERRANO: But nonetheless the whole street has curb and gutter.

MS WOLFENBARGER: Correct.

CHAIR SERRANO: So, we've established a grade for sidewalk.

MS WOLFENBARGER: Yes, there's there would be a grade established for sidewalk with the curb being in place.

CHAIR SERRANO: Okay. Thank you. Commissioners anything else? All right staff anything else you want to present? Ms. Wolfley.

MS WOLFLEY: I think I just want to reinforce that you see from the slides that there is a mixed pattern of sidewalk in the area, but it's predominantly sidewalk. And so, unless we start continuing to add to the sidewalk that's in a neighborhood like this. We won't have a continuous pattern. And so that's why the IDO is set up that way that when you come in your taking some action on your property, then it's set up that we we'll ask for the sidewalk and then you need to meet the criteria in order to get a variance to the sidewalk criteria. And so, we're arguing that these criteria are not met and in particular that the intensity of the land use and the pedestrianism in the area is benefited. The public benefit is for a sidewalk and not against a sidewalk. So, we just feel the applicant and now the appellant has not met the criteria that are required in the DPM.

CHAIR SERRANO Thank you. But you also use the term to incentivize the development of sidewalks through and through. So, you're asking the appellant to come in put the sidewalk in and meets the criteria you set forth. But you also I think somewhere in the testimony we heard the word incentivize future development of sidewalks along the whole street, but that will only trigger were to come in and request anything correct.

MS WOLFLEY: If some if some other parcel did not have a sidewalk and came in to do a plating action or building permit or some other action then then that request would trigger this sidewalk requirement as well.

CHAIR SERRANO: But if they never come in?

MS WOLFLEY: If they never come in, it would not be triggering

CHAIR SERRANO: We may have that issue with mobility obstruction public safety. We may I'm not, I mean you don't have to ask.

MS WOLFLEY: Yeah, and you know, there's an existing condition of no sidewalk at this parcel that does create some tripping or other hazards that the sidewalk would be a better remedy for and I'm sure that when we transition from this potential sidewalk to a property to the north. It doesn't have sidewalk. Every effort will be made to make that transition smooth as MS. Wolfenbarger said no tripping hazard, but we do have those hazards in the existing condition that things are at today.

CHAIR SERRANO: Thank you. Mr. Wolfley, so Mr. well she would have to defer to you to give an answer.

MS WOLFLEY: Yes, I'd like to defer to the city engineer.

CHAIR SERRANO: Alright, thank you. Please come on.

MR BIAZAR: Mr. Chair, Commissioners, actually DMD is under the city ordinance can write letters to their property owners and request for them to build that missing sidewalks to answer your questions. So, city sidewalks responsibility is left to property owners. DMD can write letters to property owners to actually because they request for them to build it.

CHAIR SERRANO: They request. So, if they chose not to abide by the request, because it's not a mandate which were putting a mandate on the appellant.

MR BIAZAR: Well, I mean you start with a request, and if they don't build it and the city ends up building it. They will go back and request for that reimbursement.

CHAIR SERRANO: But the only mandate to follow up on that request would be in the event that they were to trigger something that would require them to put...

MR BIAZAR: Not necessarily.

CHAIR SERRANO: But Ms. Wolfley just stated that the only way the abutting properties would have the mandate or requirement to put a sidewalk in. Would be if they triggered an action to do so.

MR BIAZAR: She did when I work with DMD, we were allowed to if they were missing sidewalks we were able to write letters to property owners and bequest. Either fix or replace that missing sidewalks.

CHAIR SERRANO: Okay. I understand that, but it's a request.

MR BIAZAR: Like I said, we asked.

CHAIR SERRANO: Ok, but asking would be similar to a request.

MR BIAZAR: But then after that we would follow up with a more stringer letter saying that...

CHAIR SERRANO: Let me make it simpler. So, I had the property adjoining the appellants property and you sent me a letter asking or requesting me to put a sidewalk in because the neighbor did and we're going in that direction. Am I mandated to do so?

MR BIAZAR: Per Ordinance yes you are.

CHAIR SERRANO: I am. So, it's contrary to Ms. Wolfleys testimony that the only thing that would require it would be something that would trigger it.

MR BIAZAR: That is true.

CHAIR SERRANO: Okay, so we don't know here we're at with this?

MR BIAZAR: Well, I mean per Ordinance your, I mean property owners are supposed to be on sidewalks fronting their property. So, city can obligate the property owners build their missing sidewalks.

CHAIR SERRANO: Correct. So, if we were to revert to the ordinance as you're stating then the the applicant the appellant has no basis to even want to appeal this because you're saying it's required under the ordinance regardless.

MR BIAZAR: That is true.

CHAIR SERRANO That is true?

MR BIAZAR: In my opinion yeah.

CHAIR SERRANO: But is it? Let's take the opinion part out and go to factual legal. Can you sustain his opinion as fact?

MS SANCHEZ: Chairman I would have to look into that. I don't have had answer it this time, and I would want to look at the ordinance.

CHAIR SERRANO: So, then we can go back to Ms., I think Ms. Wolfley testimony probably has more merit at this point considering we are here to deal with the appeal. Thank you, sir.

MR BIAZAR: In the meantime, we just have to find the ordinance.

CHAIR SERRANO: I appreciate it. Thank you, Commissioner Hudson.

COMMISSIONER HUDSON: Thank you. Whoever from the city would like to answer. It's probably an engineering question, but we're talking a lot about the liability and you're going to trip over this little part of the sidewalk that's higher than the dirt. Is there a possibility of floating the ends of that so that you can float it and whether it's an inch or 2 inch or whatever so you can float it. So, you don't have the issue of tripping over it and then it would blend in nicely with what the adjacent property terrain is.

MS WOLFENBARGER: Yes, that is correct when you get into the details of construction and inspection, we can do something at the ends minimally.

COMMISSIONER HUDSON: So, then you don't have to worry about the concern that our chair had is if you're jogging or you're in the wheelchair or whatever if it was floated to the adjacent property terrain, then the liability perhaps would be mitigated. Is that accurate?

MS WOLFENBARGER: Yes, for that specific area.

COMMISSIONER HUDSON: Thank you. Thank you very much.

CHAIR SERRANO: Thank you. Commissioners is there anything else? Commissioner Shaffer.

COMMISSIONER SHAFFER: Just quick a question. Everyone one likes always throwing we like to use the term as its own because we said so in this the ordinance. Is there an ordinance that's being cited? Or are we just saying, oh it's because the ordinance says so. Or we don't know?

MR BIAZAR: I will find that ordinance shortly.

COMMISSIONER SHAFFER: Thank you.

CHAIR SERRANO: Commissioners? Commissioner Eyster.

COMMISSIONER EYSTER: Thank you chair. One or two of staff witnesses have indicated that it's the long-term goal of the Development Process Manual that we would have ample sidewalks safe sidewalks ADA sidewalks pretty much throughout the city with certain situations where we wouldn't. But if maybe I would ask Ms. Sanchez or Mr. Varela if this commission overturns the DRB denial and Mr. Chavez would then have a variance would he have that variance indefinitely with this always piece that would not have to have a sidewalk. Even when the rest of the neighborhood does and 30 or 40 years.

MR VARELA: The ruling would stand until it was appealed or overturned by a higher authority.

COMMISSIONER EYSTER: So, I take that to be that would be more or less an indefinite variance, even if the rest of the neighborhood starts to come along and really becomes completely side walked.

MR VARELA: A higher authority for example would be the City Council or District Court.

COMMISSIONER EYSTER: Thank you.

CHAUR SERRANO: Thank you. So, to follow up with Commissioner Eyster question. If we're going down the path that there is an ordinance or there will be an ordinance requiring all properties to put sidewalks in as City staff as indicated and we were to go down the path of granting the appeal. Can we add a condition that would make it subject to any existing or perspective ordinance that is or maybe in place requiring said sidewalks to make the appellant abide by that? And that's probably more directed to you Mr. Varela. You can weigh in too Mr. Brito if you'd like. You need some time to?

MR VARELA: Mr. Chair if you can repeat the question?

CHAIR SERRANO: I knew you're going to say that. I guess where I was going with this this is If possible, if we were to grant the appellants appeal with the condition that would mandate him to put that side, those sidewalks in if an existing and or future ordinance is put in place requiring

them as City staff as indicated that way at that point everybody is treated the same and I think the arbitrary or capricious argument the appellants putting forth that goes away.

MR VARELA: Mr. Chairman members of the Commission. There are actually is an ordinance in place right now. It's 6-5-5-3 pedestrian's sidewalk, right add curb and gutter required all properties within the city shall have sidewalk, dry pad, curb ramps, curb and gutter in accordance with standards that Worthen 6-5-5-1. Unless the variance from the standards is allowed through the procedures established by this ordinance.

CHAIR SERRANO: Mr. Brito, can you put that that language on the screen for us, please? And while you're doing that so, Mr. Varela, you're stating you're basically agreeing with what I'm saying, by and staff, that with the ordinance in place the appellant like any other person that has property in this city is required under this ordinance to put in a sidewalk.

MR VARELA: That is correct, yes.

CHAIR SERRANO: Is there a timeframe?

MR VARELA: The ordinance does not state a timeframe.

CHAIR SERRANO: Okay, but it does say, does it say may or shall?

MR VARELA: Shall.

CHAIR SERRANO: Thank you. And Mr. Brito while you're putting that up, I'm going to do this. We're going to take a five-minute recess so it allows you to put that up, and Mr. Chavez if you have rebuttal questions, if you would bring those to Mr. Salas. I'll get them and then we'll come back and five minutes. Okay. Well reconvene at 10:02. Mr. Chavez, if you come to the podium and while you're doing that, thank you. Mr. Brito, Mr. Varela for bringing up the Ordinance. One quick question before we go to your rebuttal questions, Mr. Chavez, and this would be directed to Mr. Varela under 6-5-5-3 there's reference to a variance that I guess could be allowed. Under 6-5-5-1, in your review 6-5-5-1 would this appeal meet such a request? I guess my question is does Mr. Chavez have some standing here to, because he's talking about a variance that that if we were to grant the appeal which in essence would be a variance, right? Would that meet the criteria said, because I don't have 6-5-5-1 in front of me, but.

MR VARELA: What the ordinance did was it then redirects the person requesting the variance to the Integrated Development Ordinance and in the Integrated Development Ordinance, there is some language which could be considered guiding language or they mainly talk about variances for example, for cell tower placement and such and the very first criteria there, which is what is in the best interest of the overall community.

CHAIR SERRANO: Okay. Thank you. Ok, Mr. Chavez, you submitted to this body a list of 13 questions.

MR CHAVEZ: It's only six sir.

CHAIR SERRANO: There's only six?

MR CHAVEZ: It's only the bottom half of the page, sorry.

CHAIR SERRANO: So, the top half is not?

MR CHAVEZ: No, I just tried to reword the bottom half. The top half was notes I was taking.

CHAIR SERRANO: Alright, so the chair finds that we have. We're going to allow three questions that are relevant and by that, I mean they either have either haven't been asked and answered or there might be a little more clarification that we can provide you with, okay. And the first one would be, your question number 4, which says if the ordinance for sidewalks is in place. How many property owners have been required to put it to put in a sidewalk? I think that's been asked and answered to some degree, but I'll give you clarification as we've gone forth in this hearing we have established that there's an ordinance in place that is now requiring all property owners to put in a sidewalk. Okay. So, we go to question number 5 if staff can't be on the same page, I was an applicant supposed to understand the process and the ordinance? I can't, I'm not going to sit here and say staff is not on the same page the whole reason that we're going through this hearing and we're having this dialogue is to try to get to a resolution and to get the facts on the table with respect to whether any applicant yourself or any is to understand this process that's a hard question to answer because quite frankly a lot of applicants and I hate to use this term lay folks in this process tend to hire professionals to represent them in this process who know where all the land mines are per se, but absent that there is an it's incumbent upon the applicant to do some due diligence if they're going to represent themselves. That's the easiest answer. The question number 7, what is the city's plan to install sidewalk for rest of the block? It's a redundant question, because we sort of asked and answered that already? I think staff has made it clear in this hearing that they sent out, or they will send out requests. I think now that we've ascertained that that ordinance says what it says, I'm sure staff is going to leave here and send out a whole bunch of requests, but it's going to mandate not only you. If your appeal is not granted to put a sidewalk in, but everyone else on those streets north south east and west that are within the city proper.

MR CHAVEZ: So, there was a question. I thought was the most relevant it was number 2.

CHAIR SERRANO: Well, okay, but hold on Mr. Chavez. We're only dealing with your rebuttal questions right now. Okay staff.

MR BRITO: Mr. Chair, thank you. I just want to note per the EPC rules of conduct in addition to the ability of the appellant to enter these cross-examination questions. He is given five minutes for closing statements,

CHAIR SERRANO: Right and that's what I'm getting at. So instead of a question, we're going to give you that time to give your closing statement. So, if you there's anything that you want to add added in your closing statement, sir, okay, if you can proceed.

MR CHAVEZ: So, when I applied for, when I started this whole process I was told by DRB staff, by Planning department that I need to apply for a sidewalk waiver. Nowhere in my application, nowhere in this discussion was a waiver for a sidewalk brought up. It's all been related to a variance. There're two very distinct outcomes between a sidewalk waiver and a variance and so where's the criteria for a sidewalk wavier. I was never able to locate that the criteria that my application was judged on and determined was based on the variance criteria, which I never applied for that was based on direction from the DRB and their staff. So, you know the term sidewalk waiver and variance is being used very interchangeably, but my fee went to a sidewalk waiver and there is a separate fee for sidewalk variance. I didn't apply for that. And so, this whole discussion about a variance is confusing because that's not what I apply for. Now the information that you put up here little bit earlier all after the fact from when I applied they brought up the information that they're just bringing to, you know about the change in ordinance and so forth. Why would that information not given to me upon application? So, when you go to codify anything in place that really emboldens staff to just make these arbitrary statements because they have no accountability as to what if you know, what if this is not a case where this is not a developer the state statues I realized the City of Albuquerque is a home Charter and that you establish your own ordinances and so forth. But when you don't have that in your Ordinance, you have to defer to state policy or state statutes and state statute that I just cited specifically asked for re subdivisions that don't increase property lots. You should have a process in place for that and that's not here. And that's the whole reason for this arbitrary process is because I'm kind of a square peg they're trying to shove down with the round hole and that is not right for one. Two it doesn't make sense because the next person that's coming in is going to be asking which is it is it a waiver, well now we have information after the fact of my application.

I don't know what to say because again, the you saw the difference in opinion between the legal liability that I could be facing you try to comfort yourself and thinking that not only the city would be held liable, but the gentleman said specifically, no the individual property owner. The attorney over here said that there's a possibility I could be held liable. Well, you can bet your you know what, on the fact that if somebody were to hurt themselves getting off sidewalk on the north end or on the east end, that I would be one of the individuals I would be the first individual they're going to sue. Now they might bring the city in as because it is a city right-of-way, but they're coming after me the property owner. So, the financial burden that you're creating. I understand that you have an ordinance to put in but if you really wanted to address that ordinance, you have the 400-million-dollar problem. You're the planning department, why can't you work with the infrastructure folks in developing a bond program where you put out 40 million dollars a year. You could address that in 10 years say 20 million in 20 years. You could actually address every sidewalk issue. You wouldn't have to deal with this through a bond program. Why doesn't the city do that? The city was able to find funding to put a new sidewalk new curbing Lamppost from Broadway to 20th street on Mountain road. They did on Lomas twice in the last 20 years. They found the money to do that. Why can't they find the money to address the inner areas of the neighborhood. Thank you.

CHAIR SERRANO: Thank you, Mr. Chavez we have a question from commissioner Hudson.

COMMISSIONER HUDSON: Thank you for your comments about waiver versus variance but staff report actually states here, and I assumed that you knew that you submitted an application for what is called and these are capitalized terms a preliminary final plat and sidewalk variance was filed by the applicant on August 30th. Did you know when you filled that out that it was called a preliminary final plat and sidewalk variance. It did not say anything about a waiver.

MR CHAVEZ: I'd like to correct you on that because the second page of that application specifically calls for a waiver process and that process requires you to submit a letter explaining how you meet the definition of, or how you exceed the requirements of 14-6-6-6 so on the application. Yes, that's what the form recalls for. But if you go to the second page of the form, there's a specific area specifically for a sidewalk waiver.

COMMISSIONER HUDSON: But you knew that you sign, your application was a preliminary final plat and sidewalk variance application correct?

MR CHAVEZ: That is because the application itself does not have a category for the sidewalk waiver. It's on the second page. I had no choice but to check off that box.

COMMISSIONER HUDSON: And what is your definition between a variance and a waiver?

MR CHAVEZ: The variance according to share what they instructed me on was it a variance is the width of the sidewalk. You're asking for a variance on the width. A waiver is not to install any sidewalk at all, which is what I asked for from the very beginning. The confusion is really coming from staff and DRB, not from me. Because if you look at the denial letter on the subject line, it was referencing a variance and then you go to the body of the letter it's referencing a waiver. So, they use this term interchangeably throughout this entire process, which has been really hard for me to understand and as you can see up here, you don't even hear the term waiver, which is what I actually applied for.

COMMISSIONER HUDSON: But the form didn't call it a waiver, they call it a variance.

MR CHAVEZ: But what you're focusing on is the first page there's two pages to that application and the second page does have an area for a sidewalk waiver that I checked off. I didn't have any choice on the first page. They don't give you a choice.

COMMISSIONER HUDSON: Thank you.

CHAIR SERRANO: Commissioner Eyster.

COMMISSIONER EYSTER: Thank you chair. Mr. Chavez in the staff report there's four bases for your appeal. And I wonder if you would help us understand the third one about 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.

MR CHAVEZ: So, for two blocks from Mountain road to Marble, all of the properties are 3 feet off the curbing. Okay. So, what I was told and what the engineer said that I could request a variance to where I could only put three feet of sidewalk so it wouldn't hit the tree. Okay, but the problem is that you have a revocable permit that you have to pay ongoing. So, it's an additional tax to keep the fence in place to put in a sidewalk. They didn't mention that to you.

COMMISSIONER EYSTER: Is that on your property or up to the north of you?

MR CHAVEZ: No, no that is not my property.

COMMISSIONER EYSTER: Because what I thought I saw in the photos was that your property has a wall about 10 feet from the curb. Is that right?

MR CHAVEZ: No, there's no wall on my property I have a chain link fence on the southside and the westside.

COMMISSIONER EYSTER: So, your fence is near the curb like 3 feet.

MR CHAVEZ: its within 3 feet of the curb.

COMMISSIONER EYSTER: Okay. I think I get it now so you don't but you don't want to build any sidewalk not just a 3-foot sidewalk. Look.

MR CHAVEZ: I would actually have some consideration, but until they told me that by leaving my fence in place I would be taxed an additional revocable fee for a revocable every single year. That did not make sense to me. Why should I be paying to keep my fence?

COMMISSIONER EYSTER: Ms. Wolfenbarger is that correct that he would be charged an annual fee for the fence?

MS WOLFENBARGER: Yes, for any structures within the right-of-way that also include chain link fencing is called a revocable permit where the property owner does have to pay to keep items of theirs within the right-of-way and there is an annual fee associated with that per year. But the alternative is to remove the fence and not have it within the right-of-way. That's been pretty standard, it's coordinating with Alan Varela. We've been doing several revocable permits when people come in for an action through DRB.

COMMISSIONER EYSTER: So, does our action today affect that fence? Whether we uphold your denial or reject your denial.

MS WOLFENBARGER: In order to move forward with a platting action, the revocable permit is a separate issue from the sidewalk. Because regardless of whether or not we put in a sidewalk the fact of the matter is the fence is still in the right-of-way. So, we're still asking for the fence to either be removed, or push back the property line, or a revocable permit would be needed.

COMMISSIONER EYSTER: But it is a separate question from what we're looking at.

MS WOLFENBARGER: Yes, that is correct.

COMMISSIONER EYSTER: Thank you.

CHAIR SERRANO: Thank you, Commissioner Shaffer.

COMMISSIONER SHAFFER: Thank you, Chair. Ms. Wolfenbarger, I have a question for you in regards to that, because this is back to where we keep going and saying, you know, why is this one property getting singled out? So, I've spent this entire time looking through that entire neighborhood 70% of the neighborhood has a fence within the right-of-way. So, does every single one of those properties are they all paying a revocable permit every single one of them? And, I'm not and as we've established it's not that's a separate issue, because we're not creating an action that's creating a permit.

MS WOLFENBARGER: There are a lot of revocable permits missing within the city with existing properties. Whenever someone however comes in for any type of action through the city whether it be DRB, DRC, or Building permit at that time we do ask for a revocable permit.

MR DUBOIS: The answer to your question is...

COMMISSIONER SHAFFER: Sir hold on one second please, thank you. The question is we're separating this because we have an action for a variance, denial, appeal, but that's you know, we brought this up ok that's an additional cost for this gentleman for this process. And I'm just curious of how does the city and your department go through that? I mean how do you enforce this, other then when someone as an actual action.

MS WOLFENBARGER: Well it's something that we've had some discussions on, and actually another department within the city with revocable permits. Alan could you help me out with this?

MR VARELA: The understanding that I have, the understanding that I have is that naturally when people bring themselves to the attention of the city then they are informed of the law and the requirements and at that point they're asked, requested, required, however you prefer to phrase it all amounts to the same end result to come in compliance with the with the current rules regulations and laws at the time.

CHAIR SERRANO: Real quick follow up, you mentioned that some of revocable permits are missing. Is it also safe to say some of them just don't exist? To kind of follow up with. Mr. Varela said it's not until they bring some form of action.

MS WOLFENBARGER: Yeah there's many that don't exist.

CHAIR SERRANO: Okay, so missing and exist are two different things with respect. So, Ms. Wolfley. Thank you. Mr. Chavez. Ms. Wolfley, Mr. Chavez alluded to the fact that in the application in commissioner Hudson alluded to requested a variance but there was a box on the second page it said waiver and he checked it off. Does that, is that accurate?

MS WOLFLEY: Let me ask Ms. Gould to answer that question.

CHAIR SERRANO: It's simple you know, if it's on the application and he checked off waiver and it exists then the answers yes, if not then the answers no.

MS GOULD: So, Mr. Chair, I think the key piece of information in this is that the change that was made to the DRB rules in May was trying to clarify that the DRB was not a quasi-judicial body. Therefore, things that had previously been called waivers, things that have been previously called variances were switched to waivers. And what Mr. Chavez was originally told because that was the information we were working on, was that he was asking for a waiver to the IDO requirement that all properties have a perimeter sidewalk. And so that that was what was submitted and the difference between the waiver to the IDO criteria versus the variance to the DPM criteria regarding sidewalk width and so I think that's, and without the application in front of me I can't honestly answer that question about which box was checked or not checked, but I think that's the key piece of confusion here is that there was a change made that wasn't accurately translated. But as I think as Ms. Wolfenbarger, and Ms. Wolfley, chart showed the criteria for variance in the criteria for waiver or substantially similar.

MR CHAIR: Well let be more specific. Is there a box that says waiver on the second page?

MS GOULD: I would need to look at the application that you filled out in order to answer that question.

MR CHAIR: So, you can say yes or no, but Mr. Chavez is saying yes because he checked off that box.

MS GOULD: Which is possible and I can go through the record and find the second page of the application he filled out if you would like us to do that.

MR CHAIR: Okay. Well, then let me ask this. Let's assume that there is a box that says waiver would a reasonable person believe that they if they check that box that they would be requesting a waiver?

MS GOULD: That is probably a reasonable assumption.

MR CHAIR: Thank you. Okay, Commissioners any discussion? The floor is closed and we'll go to the Commission.

COMMISSIONER SHAFFER: Thank you chair obviously had two concerns one was legal and I think that's just no offense, that's just a quagmire of events that could possibly happen in because at any given point anyone can sue anybody for anything, so that's I think it was established that it's city right-of-way. So, they are the front-runner of the legal process there so that answer my question and that coming from my world. I understand that once you touch something. You've got to bring it up to code. I mean, that's the rule. I mean, that's how that goes or city is older and

has many things that have to get brought up to code for public safety and public well-being and to bring things to current codes. I think that there was an obvious confusion on the front end for and a little mixing of paperwork and so on so forth that contributed to Mr. Chavez dismay in this process and I think that's documented, although unintentional as there was changes from city council to the to the hand him some different processes put in place. So, it created a little bit of confusion. And that's okay in my opinion. I do think that that the city has an opportunity to do a lot of work down in those areas to help homeowners and everybody create their ADA compliances. It drives me crazy when I'm walking down a sidewalk and it ends in a pile of dirt and then you jump into the street and then you're walking in the street and now you're walking amongst the vehicle. So, I think there's opportunities for everybody. But I do understand the process that's in place that when you touch it you bring it up to code. It happens to us happens to everybody all the time. And I think that's a good process to identify things that need to happen in our city to make them better and up and up to date. So, I'm just open to more discussion amongst the Commissioners.

CHAIR SERRANO: Thank you, Commissioner Shaffer. Commissioner Eyster.

COMMISSIONER EYSTER: Thank you chair. I would like to support the pedestrian sidewalk dry pad curb and gutter section of our code, our useful code and parts in the IDO that have to do with that and rules of the Development Review Board. I do think it's an intelligent part of an intelligent community to take care of everyone and some of those people I have an acquaintance who's blind and she says man you do not want to walk in the curb her cane goes under a car a parked car and she gets a faceplant on the car. So, I do think we need to have the sidewalks uniformly around our city. I note that the appellants argument number one the DRB decision was arbitrary. I don't see anything arbitrary in their decision. The appellant says they ignored the existing sidewalk gaps in the area. I don't think that's a good argument because yes, this area does have sidewalk gaps. I think that when it was developed people probably didn't build sidewalks, but now we're looking for a city with sidewalks with ADA sidewalks. I think ADA is a federal law and so I would like to uphold the DRB denial and see that this area 50 years from now does have complete sidewalks.

CHAIR SERRANO: Thank you, Commissioner Hudson.

COMMISSIONER HUDSON: Thank you. Mr. Chair. I concur with with both Commissioner Eyster, and Commissioner Shaffer, you know were trying very hard to stick with what the IDO is calling for we're trying very hard to make Albuquerque a better place and have better infrastructure. And I think it's unfortunate that the appellant is more concerned about the cost of this then the good that it will do for the community. He actually testified that this is a highly pedestrian area and I feel that it's very important that we do uphold the DRB's denial.

CHAIR SERRANO: Thank you, Commissioner Hudson. I just want to add one thing. I think we've ascertained that the applicant was looking for a waiver more than a variance from his own testimony. And I don't know if there is a process in place for the appellant to procure a waiver and I think what he was asking was to not move the fence line, which would waive the 4 foot

requirement to a 3 foot. Now that may not be a waiver it may be a variance but nonetheless, I think we've established today that there is an ordinance in place for all properties city property to have sidewalks. So, I'm not sure if moving in the direction of granting the appeal goes contrary to law which is what we're not here to do because the appeal is on the variance and maybe we'll quickly if Mr. Brito, or Ms. Wolfley if you could just answer for the record whether there's a process in place for a waiver.

MS WOLFLEY: The current process in place through the Development Process Manual is you can request a variance to not install a sidewalk and you can request a variance to modify the width of the sidewalk and staff is repeatedly suggested that Mr. Chavez consider a request to modify the width of the sidewalk and he's still welcome to do that at any time. His plat has not been finalized. The issue of waiver you will see that language return if the City Council takes action to move this section back in the IDO and it will be called a waiver and then that portion of the DPM that we're using today will be deleted.

CHAIR SERRANO: Thank you. So, in essence based on your testimony, no final action has been taken. So, if hypothetically Mr. Chavez can come in amend his application for a variance from 4 foot by 3 foot.

MS WOLFLEY: Correct. He can apply for whatever width he wants to...

CHAIR SERRANO: He has to reapply? But he can amend it and he would not have, and avoid having to pay additional fees right?

MS GOULD: Mr. Chair generally in a case like this, we would amend the existing application to add the variance request and there would be additional, we would be paying for the variance request. That could do that could be discussed among staff, but that would generally be the process.

MR CHAVEZ: Okay, but he would need to initiate that with DRB.

MS GOULD: Yes.

CHAIR SERRANO: Okay. Okay, so we've established that so I think we've covered everything Commissioners anything else. You understood or and understand what I just said, Mr. Chavez?

You understand what I just said about the opportunity for you to go in and amend the variance from a 4 foot to a 3 foot.

MR CHAVEZ: Yes.

CHAIR SERRANO: Okay, thank you. Okay Commissioners. No further discussion. I will entertain a motion. Commissioner Eyster.

COMMISSIONER EYSTER: Thank you chair. In the matter of project number 2019-002811, VA-2019-00288, Variance. I move that the commission uphold the DRBs denial of a request for a sidewalk variance.

CHAIR SERRANO: Is there a second? Commissioner Hudson's. It's been moved by Commissioner Eyster, seconded by Commissioner Hudson that agenda item number one project number 2019-002811 be moved to uphold the denial of the DRBs denial. No further discussion Commissioners, excluding commissioner Cruz all those in favor, raise your right and signify by saying aye. Opposed nay passes unanimously. Thank you.

EPC HEARING

FEBRUARY 13, 2020

Agenda #: 1

AC-19-18

Appeal of Sidewalk Variance Denial– DRB

Project #2019-002811, SI-2019-00158, VA-2019-00288

Location

Located the Northeast corner of 15th Street NW
And Granite Ave. NW, containing approximately 0.32 acres

Staff Planners: Jolene Wolfley, DRB Chair

Jeanne Wolfenbarger, Traffic Engineering Manager

INTRODUCTION

Project #	2019-002811
Case #	VA-2019-00288
Agent	Richard Chavez
Applicant	Richard Chavez
Request	Appeal of Sidewalk Variance Denial– DRB
Location	Located at the Northeast corner of 15 th Street NW And Granite Avenue NW
Size	Approximately 0.32 acres
Existing Zoning	R1-A
Proposed Zoning	N/A

OVERVIEW

- Application for Sidewalk Variance was filed with Plat Application
- DRB denied the Sidewalk Variance
- Applicant appealed
- LUHO/City Council reassigned appeal to EPC
- EPC is the appeal body for Sidewalk Variance per DPM

77A

--IDO 1-7(A)(1)

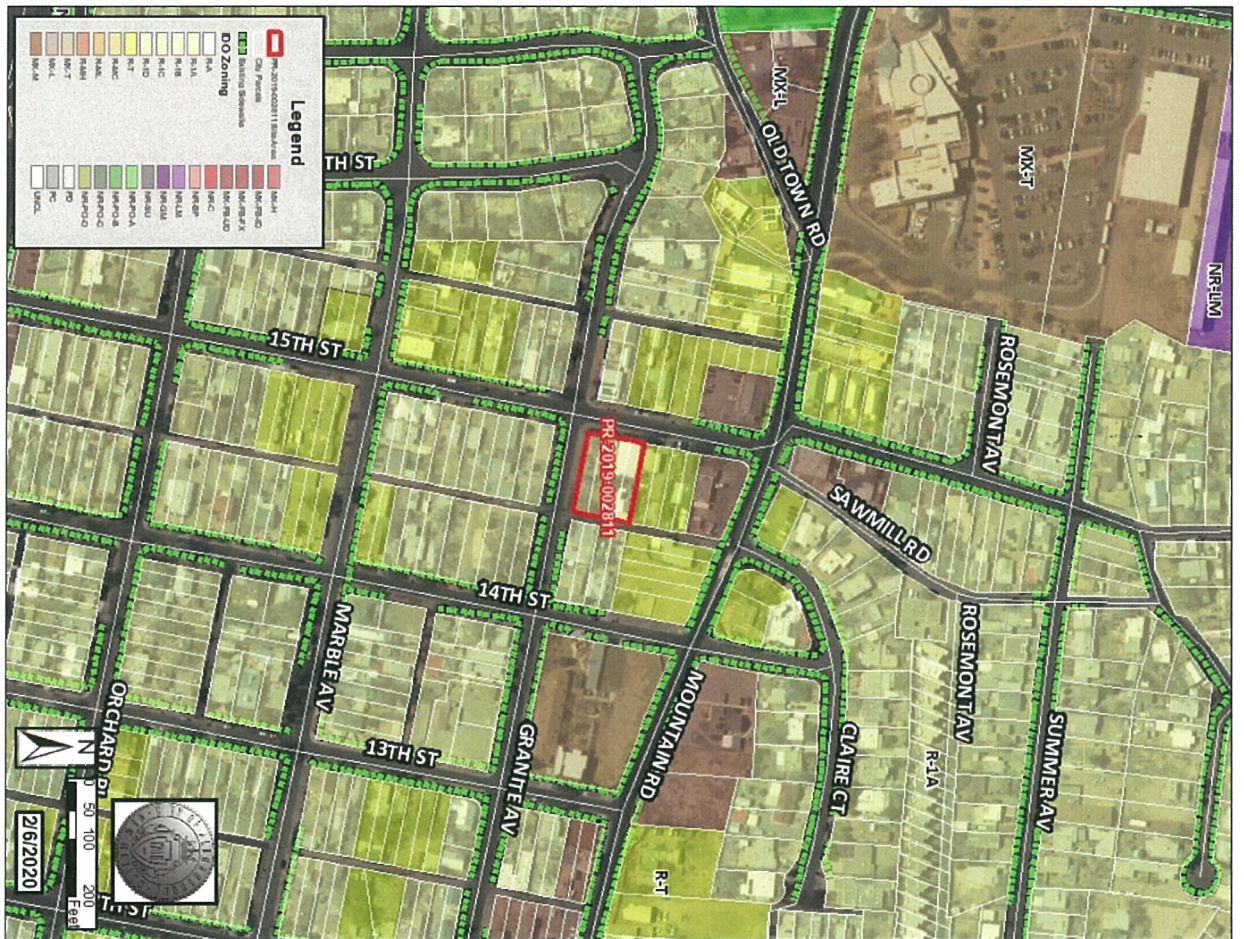
A change to property
triggers

IDO requirements

--Lots are being replatted

**DRB Determined
Sidewalk Variance
Criteria Not Met**

- Not a low intensity land use
- A sidewalk would contribute to the public welfare
- Much of the neighborhood has sidewalk



NEIGHBORHOOD--GREEN DASHES ARE SIDEWALK

ONE
ALBANY
UNIVERSITY

PROCESSING OF SIDEWALK VARIANCE

- IDO requires perimeter sidewalk for all properties
- R-19-150 Removed Sidewalk Variance from the IDO
- DPM Chapter 12 Criteria for Sidewalk Variance

DPM

IDO

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

CITY OF ALBUQUERQUE CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Brennon Williams, Director, Planning Department
FROM: Stephanie M. Yara, Director, Council Services *SM 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

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

86A

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.

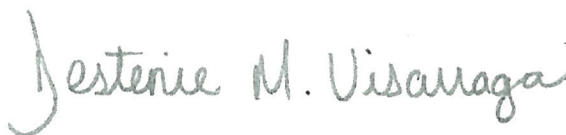
12 (The Hearing was concluded at 9:38 a.m.)
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REPORTER'S CERTIFICATE

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

94A

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.

CITY OF ALBUQUERQUE



Planning Department

Brennon Williams, Interim Planning Director

Development Review Division

600 2nd Street NW – 3rd Floor

Albuquerque, NM 87102

NOTICE OF APPEAL

March 2, 2020

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on February 28, 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-20-6

PLANNING DEPARTMENT CASE FILE NUMBER:

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

PO Box 1293

Albuquerque

APPLICANT: Richard Chavez
906 15th Street NW
Albuquerque NM, 87104

NM 87103

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

www.cabq.gov



ENVIRONMENTAL PLANNING COMMISSION AGENDA

Thursday, February 13, 2020

8:30 a.m.

Plaza Del Sol Hearing Room, Lower Level
600 2nd Street NW

MEMBERS

Dan Serrano, Chair

David Shaffer, Vice Chair

Joseph Cruz

Richard Meadows

Johnathan R. Hollinger

Karen Hudson

Gary L. Eyster P.E. (Ret.)

Robert Stetson

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. However, interested parties can monitor the progress of the hearing by calling the Planning Department at **924-3860**. All parties wishing to address the Commission must sign-in with the Commission Secretary at the front table prior to the case being 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. Announcement of Changes and/or Additions to the Agenda
- C. Approval of Amended Agenda
- D. Swearing in of City Staff

1. 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 15th ST NW and Granite Ave NW, containing approximately 0.32 acre(s). (J-13)

Staff Planner: Jolene Wolfley

2. Project #2019-002765

SI-2019-00380 –Site Improvement

Modulus Architect Inc., agent for Red Shamrock 4 LLC, request the above action for all or a portion of Lots 1 Thru 9 Coors Pavilion (Being A Replat Of Tract X-1-A2, of Tracts X-1-A1 & X-1-A2 University Of Albuquerque Urban Center), located on Coors Blvd. NW, between St. Josephs Dr. NW, and Coors Blvd. NW , containing approximately 21 acres. (G-11)

Staff Planner: Leslie Naji

(CONTINUED from January 9, 2020 Hearing)

3. Project #2018-001695

SI-2019-00381 – Major Amendment Site Plan–
EPC and removal of use restrictions from site
plan

Modulus Architect Inc., agent for Novus Properties LLC, request the above action for all or a portion of Tracts A-1, A-2-A, A-2-B, B, C, D, E, F, G, H of Fountain Hills Plaza Subdivision and Lot 2, Block B and Lot 3, Block B of Albuquerque West Subdivision and Lot 6-A-1-A of Albuquerque West Unit 1, zoned NR-C, located on Nunzio Ave. NW, between Paradise Blvd. NW & Vista Fuente NW, containing approximately 31.0 acres. (C-12)

Staff Planner: Linda Rumpf

(DEFERRED from January 9, 2020 Hearing)

4. Project #2019-002682 (1008521)

RZ-2019-00049 – Zone Map Amendment
(Zone Change)
SI-2019-00266 – Site Plan

Richard Dobbs and Havanna Kean, agents for QMD, LLC, request the above action for all or a portion of Tract A, Summary Plat of Tract N, Paradise Hills Industrial Park, and a portion of Tract 2 of Eagle Ranch, and a portion of a 100' PNM Easement, zoned MX-M, to PD, located on Irving Blvd. NW, between Eagle Ranch Rd. NW and Coors Blvd. NW (4349 Irving Blvd. NW), approximately 4 acres. (C-13)

Staff Planner: Catalina Lehner

(DEFERRED from November 14, 2019)



ENVIRONMENTAL PLANNING COMMISSION ACTION SUMMARY

Thursday, February 13, 2020

8:30 a.m.

Plaza Del Sol Hearing Room, Lower Level
600 2nd Street NW

COMMISSIONER MEMBERS PRESENT:

Dan Serrano, Chair
David Shaffer, Vice Chair
Karen Hudson
Gary L. Eyster, P.E. (Ret.)
Richard Meadows
Joseph Cruz
Robert Stetson
Jonathan R. Hollinger

Call to Order: 8:35 am

- A. Pledge of Allegiance
- B. Announcement of Changes and/or Additions to the Agenda
- C. Approval of Amended Agenda
- D. Swearing in of City Staff

1. Project #2019-002811

VA-2019-00288 - VARIANCE

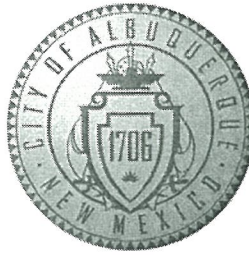
AC-19-18 Appeal of Denial of DPM Variance
by the Development Review Board

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 15th ST NW and Granite Ave NW, containing approximately 0.32 acre(s). (J-13)
Staff Planner: Jolene Wolfley

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

**For 7: – Serrano, Eyster, Meadows, Shaffer, Stetson,
Hudson, & Hollinger**

Commissioner Cruz Abstained



NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Albuquerque Environmental Planning Commission (EPC) will hold a **Public Hearing** on **Thursday, February 13, 2020 at 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the following item:

Project #2018-001695

SI-2019-00381 – Major Amendment Site Plan
– EPC including removal of use restrictions

Modulus Architect Inc., agent for Novus Properties LLC, request the above action for all or a portion of Tracts A-1, A-2-A, A-2-B, B, C, D, E, F, G, H of Fountain Hills Plaza Subdivision and Lot 2, Block B and Lot 3, Block B of Albuquerque West Subdivision and Lot 6-A-1-A of Albuquerque West Unit 1, zoned NR-C, located south of Paradise Blvd. NW, north of Paseo del Norte NW, west of Eagle Ranch Rd. NW, and east of Davenport St. NW, containing approximately 37.0 acres. (C-12)
Staff Planner: Linda Rumpf

Project #2018-001402

SI-2018-00171 – Site Plan
VA-2019-00103- Variance

Consensus Planning, Inc, agent for Gamma Development, LLC, requests the above action for all or a portion of Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West; zoned R-A, located at 5001 Namaste Rd. NW, between La Bienvenida Pl. NW and the Oxbow Open Space, containing approximately 23 acres. (F-11 and F-12) **(Remand)**
Staff Planner: Catalina Lehner

Project #2019-002682 (1008521)

RZ-2019-00049 – Zone Map Amendment
(Zone Change)
SI-2019-00266 – Site Plan

Richard Dobbs and Havanna Kean, agents for QMD, LLC, request the above action for all or a portion of Tract A, Summary Plat of Tract N, Paradise Hills Industrial Park, and a portion of Tract 2 of Eagle Ranch, and a portion of a 100' PNM Easement, zoned MX-M, to PD, located on Irving Blvd. NW, between Eagle Ranch Rd. NW and Coors Blvd. NW (4349 Irving Blvd. NW), approximately 4 acres. (C-13)
Staff Planner: Catalina Lehner

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 15th ST NW and Granite Ave NW, containing approximately 0.32 acre(s). (J-13) Staff Planner: Jolene Wolfley

Dan Serrano, Chair
Environmental Planning Commission

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL JANUARY 15, 2020.

APPROVED

Russell Brito
Urban Design & Development
Planning Department