



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

<b>SUBDIVISIONS</b>			
<input type="checkbox"/> Major – Preliminary Plat (Form S1)	<input type="checkbox"/> Final Sign off of EPC Site Plan(s) (Form P2)		
<input type="checkbox"/> Minor – Preliminary/Final Plat (Form S2)	<input type="checkbox"/> Major Amendment to Site Plan (Form P2)	<input type="checkbox"/> Vacation of Public Right-of-way (Form V)	
<input type="checkbox"/> Major - Final Plat (Form S2)	<b>MISCELLANEOUS APPLICATIONS</b>		
<input type="checkbox"/> Minor Amendment to Preliminary Plat (Form S2)	<input type="checkbox"/> Extension of Infrastructure List or IIA (Form S1)	<input type="checkbox"/> Vacation of Public Easement(s) DRB (Form V)	
<input type="checkbox"/> Extension of Preliminary Plat (Form S1)	<input type="checkbox"/> Minor Amendment to Infrastructure List (Form S2)	<input type="checkbox"/> Vacation of Private Easement(s) (Form V)	
	<input type="checkbox"/> Temporary Deferral of S/W (Form V2)	<b>PRE-APPLICATIONS</b>	
	<input type="checkbox"/> Sidewalk Waiver (Form V2)	<input type="checkbox"/> Sketch Plat Review and Comment (Form S2)	
<b>SITE PLANS</b>			
<input type="checkbox"/> DRB Site Plan (Form P2)	<input checked="" type="checkbox"/> Waiver to IDO (Form V2)	<b>APPEAL</b>	
	<input type="checkbox"/> Waiver to DPM (Form V2)	<input type="checkbox"/> Decision of DRB (Form A)	
<b>BRIEF DESCRIPTION OF REQUEST</b>			
Request for Variance to IDO Section 5-5(l)(1)(e) Design Drive-through or Drive-up Facility Design – Corner Lot			

<b>APPLICATION INFORMATION</b>		
Applicant: Gary Hines		Phone: (505) 263-6939
Address: 5300 High Canyon Trail		Email: ghines125@comcast.net
City: Albuquerque	State: NM	Zip: 87111
Professional/Agent (if any): Jacqueline Fishman, AICP		Phone: (505) 764-9801
Address: 302 Eighth Street NW		Email: fishman@consensusplanning.com
City: Albuquerque	State: NM	Zip: 87102
Proprietary Interest in Site: Owner	List <u>all</u> owners:	
<b>SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)</b>		
Lot or Tract No.: 38A	Block: A	Unit: N/A
Subdivision/Addition: Sombra del Monte	MRGCD Map No.:	UPC Code: 101905951740812403
Zone Atlas Page(s): H-19	Existing Zoning: MX-L	Proposed Zoning: N/A
# of Existing Lots: 1	# of Proposed Lots: N/A	Total Area of Site (Acres): .4364
<b>LOCATION OF PROPERTY BY STREETS</b>		
Site Address/Street: 2505 Wyoming Blvd NE	Between: Menaul Boulevard	and: Candelaria Road
<b>CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)</b>		
VA-2019-00004		

Signature:	Date: June 1, 2020
Printed Name: Jacqueline Fishman, AICP	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

<b>FOR OFFICIAL USE ONLY</b>					
Case Numbers	Action	Fees	Case Numbers	Action	Fees
Meeting Date:				Fee Total:	
Staff Signature:	Date:			Project #	

**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**

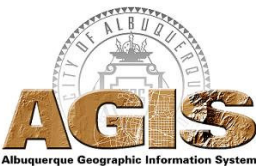
- Interpreter Needed for Meeting? \_\_\_ if yes, indicate language: \_\_\_\_\_
- A Single PDF file of the complete application including all documents being submitted must be emailed to [PLNDRS@cabq.gov](mailto:PLNDRS@cabq.gov) prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF shall be organized with the Development Review Application and this Form 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 14-16-6-6(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")

<p><i>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.</i></p>	
<p>Signature: </p>	<p>Date: June 1, 2020</p>
<p>Printed Name: Jacqueline, Fishman AICP</p>	<p><input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent</p>
<p><b>FOR OFFICIAL USE ONLY</b></p>	
<p>Case Numbers: _____</p>	<p>Project Number: _____</p>
<p>Staff Signature: _____</p>	
<p>Date: _____</p>	

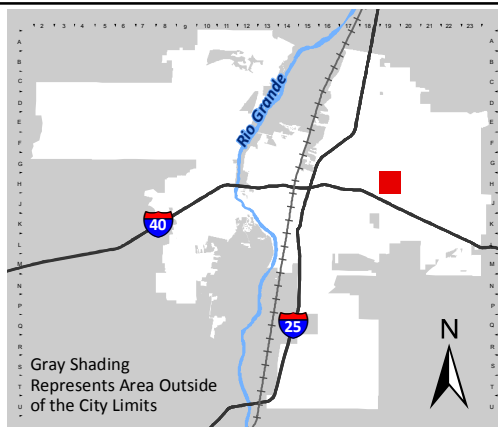


For more details about the Integrated Development Ordinance visit: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance>

# IDO Zone Atlas May 2018



IDO Zoning information as of May 17, 2018  
The Zone Districts and Overlay Zones  
are established by the  
Integrated Development Ordinance (IDO).



Zone Atlas Page:  
**H-19-Z**

- Easement
- Escarpment
- Petroglyph National Monument
- Areas Outside of City Limits
- Airport Protection Overlay (APO) Zone
- Character Protection Overlay (CPO) Zone
- Historic Protection Overlay (HPO) Zone
- View Protection Overlay (VPO) Zone

Gray Shading  
Represents Area Outside  
of the City Limits



0 250 500 1,000  
Feet

April 24, 2020

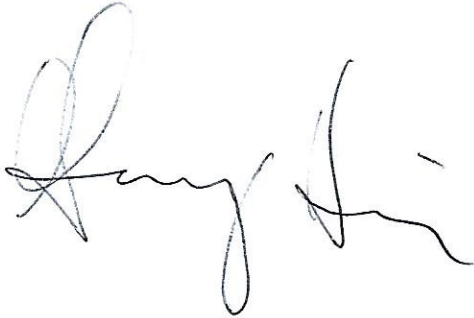
Robert Lucero, Esq.  
Zoning Hearing Examiner  
City of Albuquerque  
600 Second Street NW  
Albuquerque, NM 87102

RE: Variance Request, Property Owner Letter of Authorization

Dear Mr. Lucero:

This letter serves as authorization for Consensus Planning, Inc. to act as agent for the Variance request and all other planning actions through the City of Albuquerque related to the real property owned by Gary Hines at 2505 Wyoming Boulevard NE, Albuquerque, NM.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Hines". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke.



June 1, 2020

Jolene Wolfley, Chair.  
Development Review Board  
City of Albuquerque  
600 Second Street NW  
Albuquerque, New Mexico 87102

Landscape Architecture  
Urban Design  
Planning Services

**RE: Request for Variance to IDO Section 5-5(l)(1)(e) Design Drive-through or Drive-up Facility Design – Corner Lot**

Dear Ms. Wolfley:

302 Eighth St. NW  
Albuquerque, NM 87102

(505) 764-9801  
Fax 842-5495  
cp@consensusplanning.com  
www.consensusplanning.com

The purpose of this letter is to request approval of a variance to the Integrated Development Ordinance (IDO) Section 5-5(l)(1)(e) - for corner lots; the delivery service window shall be located the non-corner side of the site and/or at the rear side of the building. The subject property is located at 2505 Wyoming Boulevard NE and is legally described as "Lot 38-A Plat of Lot 38-A Block A, Sombra Del Monte (A Replat of Lots 37-A & 38 Block A)". The site is 0.4364 acres and is zoned MX-L, which allows the Applicant to use the site for a restaurant. The former Zoning Hearing Examiner (ZHE) approved a Conditional Use for Drive-through for this project in April 2019 (Project 2019-001935; VA-2019-00004).



*Subject Property*

**PRINCIPALS**

James K. Strozier, FAICP  
Christopher J. Green, PLA,  
ASLA, LEED AP  
Jacqueline Fishman, AICP

The Applicant is proposing the redevelopment of a vacant site that was previously a Circle K convenience store and gas station. The project will reuse the vacant convenience store building for a drive-through restaurant and the carwash building for on-site storage related to the primary use of restaurant. There will be no customer seating inside the restaurant. An order



board will be located on the west side of the building (rear) and a service window will be located on the south side of the building (corner side).

**BACKGROUND**

On April 3, 2019, a conditional use to allow a drive-through facility in the MX-L zone was approved by the ZHE (Project 2019-001935; VA-2019-00004). The project is currently in review for a building permit and received comments from the Zoning plan reviewer regarding the proposed locations of the drive-through service window and delivery service window, which prompted this application. Consensus Planning submitted a request to the Zone Enforcement Officer (ZEO) to determine if the drive-through design met the following two IDO provisions for drive-through service windows:

*5-5(I)(1)(b): Drive-through service windows shall be oriented away from pedestrian areas, residentially-zoned areas, and public streets to the maximum extent practicable; and*

*5-5(I)(1)(e): For corner sites, delivery service windows or facilities shall be located on the non-corner side of the site and/or at the rear of the building.*

The ZEO determined that the location of the drive-through service window met the criteria of *5-5(I)(1)(b)*, and was oriented away from the residentially-zoned areas to the west of the property, the pedestrians areas, and public streets to the “maximum extent practicable”. However, the ZEO also determined that the location of the service window *did not meet* the explicit language of *5(I)(1)(e)* and that the service window, located on the corner side of the site, would require a Variance-ZHE. The ZEO acknowledged that the failure to meet IDO compliance for this provision was due to the special circumstances applicable to the configuration of the subject property. The ZEO also acknowledged that the adaptive reuse of an existing site is the type of development the Planning Department generally encourages (*see attached letter from the ZEO dated March 31, 2020*).

Consensus Planning submitted the application for variance to the ZHE on May 1, 2020 per the ZEO’s direction. It was determined on May 29, 2020 that the ZHE did not have the authority to approve this variance and instead the appropriate body for this variance to IDO Section 14-16-5-5: Parking and Loading is the Development Review Board (DRB) (*see attached email from James Aranda, dated May 29, 2020*). Consensus Planning is subsequently making this submittal to the DRB on June 1, 2020.

**EXISTING CONDITIONS**

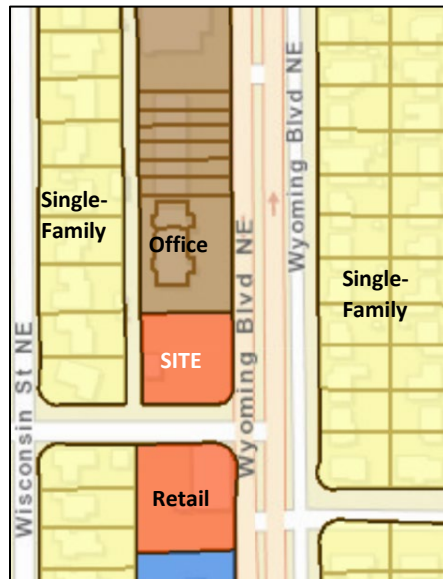
The subject property is in an Area of Change on the northwest corner of Wyoming Boulevard and Claremont Avenue. Wyoming Boulevard is a Principal Arterial and a Multi-Modal Corridor, as designated by the ABC Comprehensive Plan. Claremont Avenue is a Local Street and is a Bicycle Boulevard. The site currently has one driveway from Wyoming Boulevard and two driveways from Claremont Avenue.



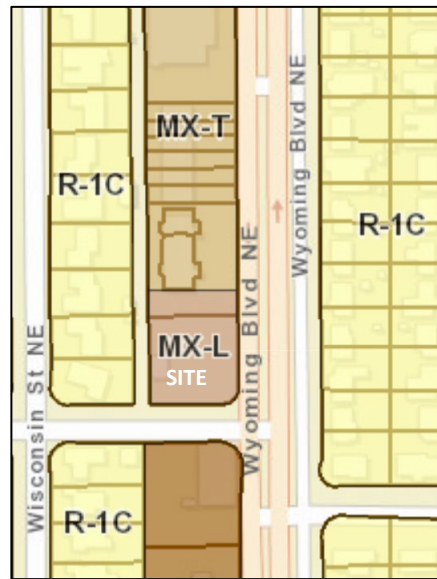
Existing structures on the subject property; view from Wyoming Boulevard.

The subject property is currently vacant with two structures on the site. The previous Circle K convenience store building is in the center of the site and a carwash building is located to the west of the main building and adjacent to a 20-foot alley and low-density residential development. The Applicant recently applied for approval and installation of project signs for the new restaurant.

There is a mixture of zoning and land uses surrounding the subject property including office, retail, and single-family residential. Zoning includes Mixed-Use Transition (MX-T), Mixed-Use Moderate Intensity (MX-M), and Single-family Large Lot residential (R1-C).



Surrounding Land Use



Surrounding Zoning

TABLE 1: SURROUNDING LAND USE AND ZONING		
	Land Use	Zoning
North	Office	MX-T
South	Commercial retail	MX-M
East	Single-family large lot	R1-C
West	Single-family large lot	R1-C



## VARIANCE REQUEST and JUSTIFICATION

The Applicant is requesting a variance to IDO Section 5-5(l)(1)(e) Drive-through or Drive-up facility Design: *For corner sites, delivery service windows or facilities shall be located on the non-corner side of the site and/or at the rear of the building.*

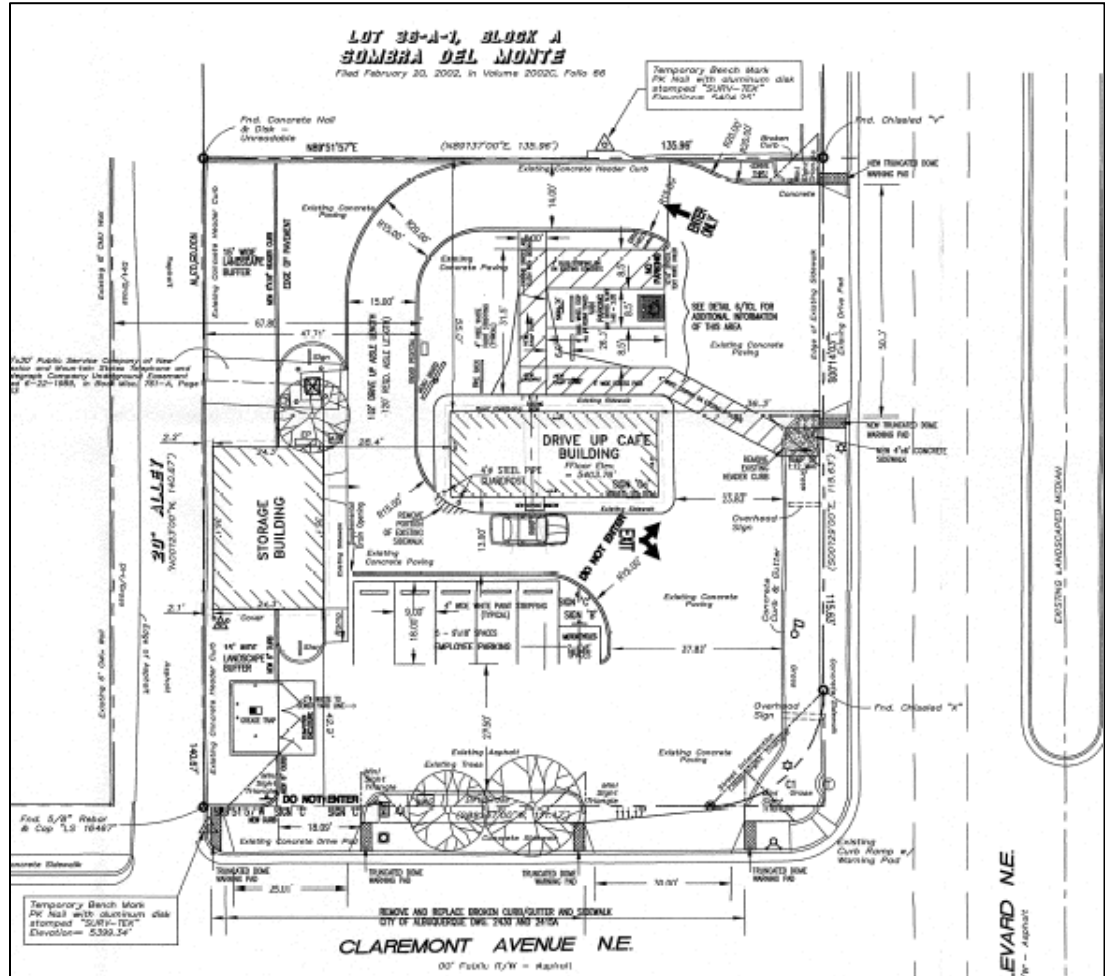
The Applicant is requesting a variance to allow a delivery service window on a corner lot to be located on the south side of the existing building facing Claremont Avenue. The following explanation summarizes how this request meets the criteria for variance approval outlined in Section 6-6(L)(3) of the IDO:

***1.a.: There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.***

**Applicant Response:** There are special circumstances that are applicable to the subject property that are not self-imposed and do not apply to other property in the MX-L zone or vicinity but limit the location of the delivery service window to the corner side of the property. The project is a proposed redevelopment and reuse of two existing buildings; the main building that will contain the restaurant and drive through service window is located at the center of the site. Redevelopment of blighted properties is a goal of the ABC Comprehensive Plan and is supported by the IDO.

Another special circumstance is the approved Traffic Circulation Layout (TCL) Plan that was approved on January 14, 2020 illustrates the traffic circulation for the drive-through (*see TCL Plan below*). The Site Plan shows a single entrance from Wyoming Boulevard with stacking spaces on the north and west side of the site, an order board on the west side of the building (rear), and the delivery service window on the south side (corner side) facing Claremont Avenue. Traffic exits the site onto Claremont Avenue or Wyoming Boulevard. As the Site Plan shows, to reuse the existing structures, mitigate the impact on residential properties to the west, and meet IDO required stacking spaces, the delivery service window must be located on the south side of the site.





Approved TCL Plan.

This Site Plan provides the safest and most efficient circulation while maintaining the existing building and complying with all IDO standards for stacking spaces. Strict compliance with the minimum standards of the IDO that would require the delivery service window on the rear or non-corner side of the site would create an extraordinary hardship on the project as it would require demolition or a major remodel of the existing building, effectively terminating the project.

**2. The Variance will not be materially contrary to the public safety, health, or welfare.**

**Applicant Response:** This variance will not be materially contrary to the public safety, health, or welfare. The variance will allow for an adaptive reuse of a building on a blighted infill site along a Multi-Modal corridor. The proposed development will improve safety of the site by the closing one of two driveways along Claremont Avenue, which will reduce traffic exiting the site onto the public street. New landscaping, sidewalk, and neighborhood edge improvements along the alleyway to the west will provide a safer more hospitable environment for pedestrians and residential neighbors. Currently,

this vacant and blighted site attracts illegal activity and is a nuisance to neighbors. The development of this site will provide a positive use to the area and add to the vibrant streetscape.

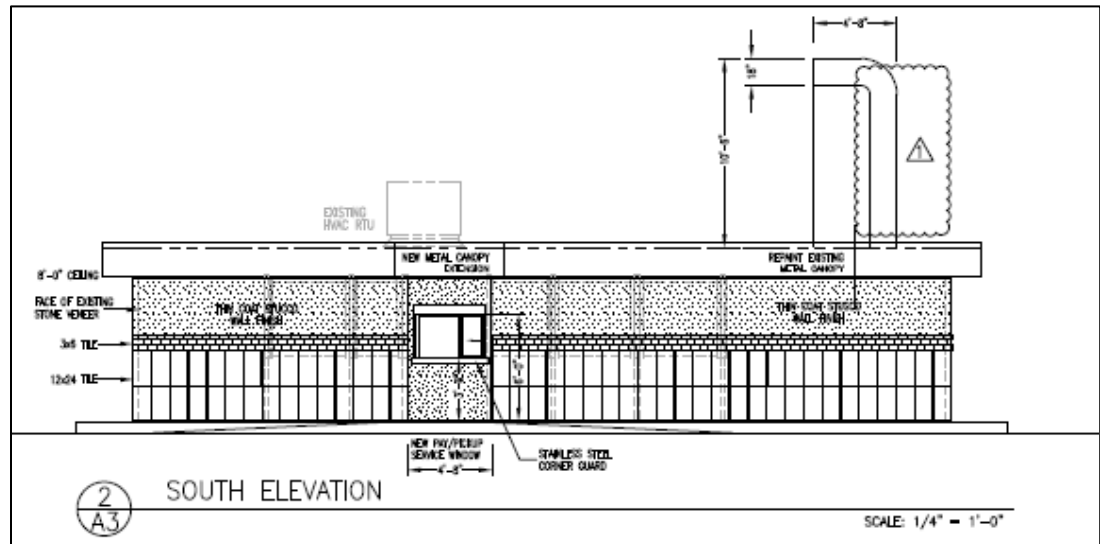
An adjacent neighbor to the west came to the 2019 ZHE hearing on the conditional use request and stated his full support for this project (*see Notification of Decision, Findings 40-42*). No other neighbors or neighborhood associations contacted Consensus Planning or came to the 2019 ZHE hearing or have contacted our office regarding this current request.



*Existing building and location of proposed delivery service window facing Claremont Avenue.*

**3. *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.***

**Applicant Response:** As an adaptive reuse of existing buildings, this variance will not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity. The previous use of a gas station, car wash, and convenience store had a greater adverse impact on surrounding properties and this site is currently attracting transients and criminal activities (*see Notification of Decision, Finding 42*). This redevelopment project will provide a positive example of adaptive reuse for vacant buildings in Albuquerque, including several other vacant Circle K sites around the Albuquerque metro. In addition, the restaurant will close by 8:00 p.m.



*South elevation showing the location of the delivery service window on the existing building.*

Given the location of the existing building at the center of the site with parking and landscape areas between the building and Claremont, there is minimal, if any, impact from the delivery service window facing Claremont Avenue. As noted in the previous conditional use request, which included the conceptual site plan, the drive-through order board on the west and the delivery service window on the south façade of the building are located approximately 68 feet and 97 feet, respectively, from the adjacent residential property lines to the west. The ZHE agreed with the Applicant that the storage building, alley, landscape buffer, and wall/fence provided adequate buffering to the residential properties to the west (*see Notice of Decision, Findings 20-24 and 34*).

**4. The Variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.**

**Applicant Response:** The variance to the placement of the delivery service window at this drive through restaurant will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements. This is an infill site that will be redeveloped within the existing site boundary and utilize the existing driveways on Wyoming Boulevard and Claremont Avenue.

**5. The Variance will not conflict significantly with the goals and provisions of any city, county, or AMAFCA adopted plan or policy, this IDO, or any other City code or ordinance.**

**Applicant Response:** The variance to the placement of the delivery service window does not conflict with the goals and provisions of any applicable plan or policy, IDO, or City ordinances. It is consistent with and furthers goals and policies that address infill and redevelopment in Areas of Change with existing infrastructure and public facilities. The Applicant is proposing



to reuse the existing buildings, which will be consistent in scale and form to the buildings in this area. This property has become a nuisance to the neighborhood by attracting homeless people and an accumulation of trash. Applicable goals and policies are as follows:

*Policy 5.2.1 (h) Encourage development that adds complementary uses and is compatible in form and scale to the immediately surrounding development.*

*Policy 5.3.1 Infill Development: Support additional growth in areas with existing infrastructure and public facilities.*

*Policy 5.6.2 Areas of Change: Direct growth and more intense development to Centers, Corridors, industrial and business parks, and Metropolitan Redevelopment Areas where change is encouraged.*

*Policy 7.3.4 Infill: Promote infill that enhances the built environment or blends in style and building materials with surrounding structures and the streetscape of the block in which it is located.*

**6. The Variance will not allow, encourage, or make possible undesired development in the 100-year Floodplain.**

**Applicant Response:** Not applicable; the proposed project is not within a 100-year Floodplain and City Hydrology has approved the grading/drainage plan at the Building Permit level.

**7. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.**

**Applicant Response:** The variance for the location of a delivery service window located on the corner side of this site will not materially undermine the intent and purpose of the IDO or the MX-L zone district. The variance supports the intent of the IDO to provide a use that is appropriate for the area. The Applicant has taken steps in the design of the property to meet IDO requirements for drive-throughs and neighborhood edges to ensure the development will not have negative impacts on the surrounding neighbors. As confirmed by the ZEO, the location of the drive-through service window on the corner side of the subject property protects the adjacent residential neighbors to the “maximum extent practicable”, illustrating that it is the best location on the site.

The purpose of the MX-L zone is “to provide for neighborhood-scale convenience shopping needs, primarily at the corners of collector intersections. Primary land uses include non-destination retail and commercial uses, (etc.)”. The Applicant is proposing a neighborhood-scale commercial use that will redevelop a blighted property into a convenient drive-through restaurant that is similar in scale and intensity with surrounding commercial and office properties. Furthermore, the drive-through traffic configuration creates a safe, efficient, and attractive use for this property.



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

**Applicant Response:** The variance is to the placement of a delivery service window facing a public street. It does not propose a change to the dimensional standards relative to size, area, or development standards in the MX-L.

**9. *The Variance is the minimum necessary to avoid extraordinary hardship or practical difficulties.***

**Applicant Response:** The success of this project is predicated on the adaptive reuse of the existing building. The requested variance is the minimum necessary to retain the existing buildings, provide appropriate separation and buffering to the adjacent low-density residential development to the west, and redevelop the property as a drive-through restaurant. The project costs involved in demolition and rebuilding of a new restaurant would cause extraordinary hardship. As stated, the Applicant has complied with all other provisions applicable to the development of this property as a restaurant with an accessory drive-through facility and is prepared to move forward should the variance be granted.

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

**Applicant Response:** Not applicable to this application or project.

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

**Applicant Response:** Not applicable to this application or project.

#### **NEIGHBORHOOD COORDINATION**

As mentioned above, the request for variance was initially made to the Zoning Hearing Examiner (ZHE). The affected neighborhood associations and adjacent property owners were notified both for the variance and also the conditional use request in 2019. At no time during either process was there a request for a meeting. As noted above, an adjacent neighbor testified in support of the project during the ZHE hearing for the conditional use. Consensus Planning contacted the affected neighborhood associations and property owners on the following dates:

#### **Variance Notifications:**

- April 06, 2020 – Pre-Application email sent to Hoffmantown NA and District 7 Coalition of Neighborhood Associations.
- April 30, 2020 – Application email and mailed letter sent to Hoffmantown NA and District 7 Coalition of Neighborhood Associations.



- April 30, 2020 – Letters sent Property Owners within 100-foot buffer.
- June 1, 2020 – Letters and email sent to Hoffmantown NA and District 7 Coalition of Neighborhood Associations explaining that the City changed direction on the variance and the Applicant is applying to the DRB and withdrawing the original request to the ZHE.
- June 1, 2020 – Letters sent to Property Owners explaining that the City changed direction on the variance and the Applicant is applying to the DRB and withdrawing the original request to the ZHE.

**Conditional Use Notifications:**

- December 13, 2018 – Pre-Application email sent to Hoffmantown NA.
- January 2, 2019 – Application email and mailed letter sent to Hoffmantown NA.
- January 2, 2019 – Letters sent to Property Owners within 100-foot buffer.

Based upon the facts presented, we respectfully request approval of this variance for a delivery service window on a corner site facing the public street.

Sincerely,

Jacqueline Fishman, AICP  
Principal

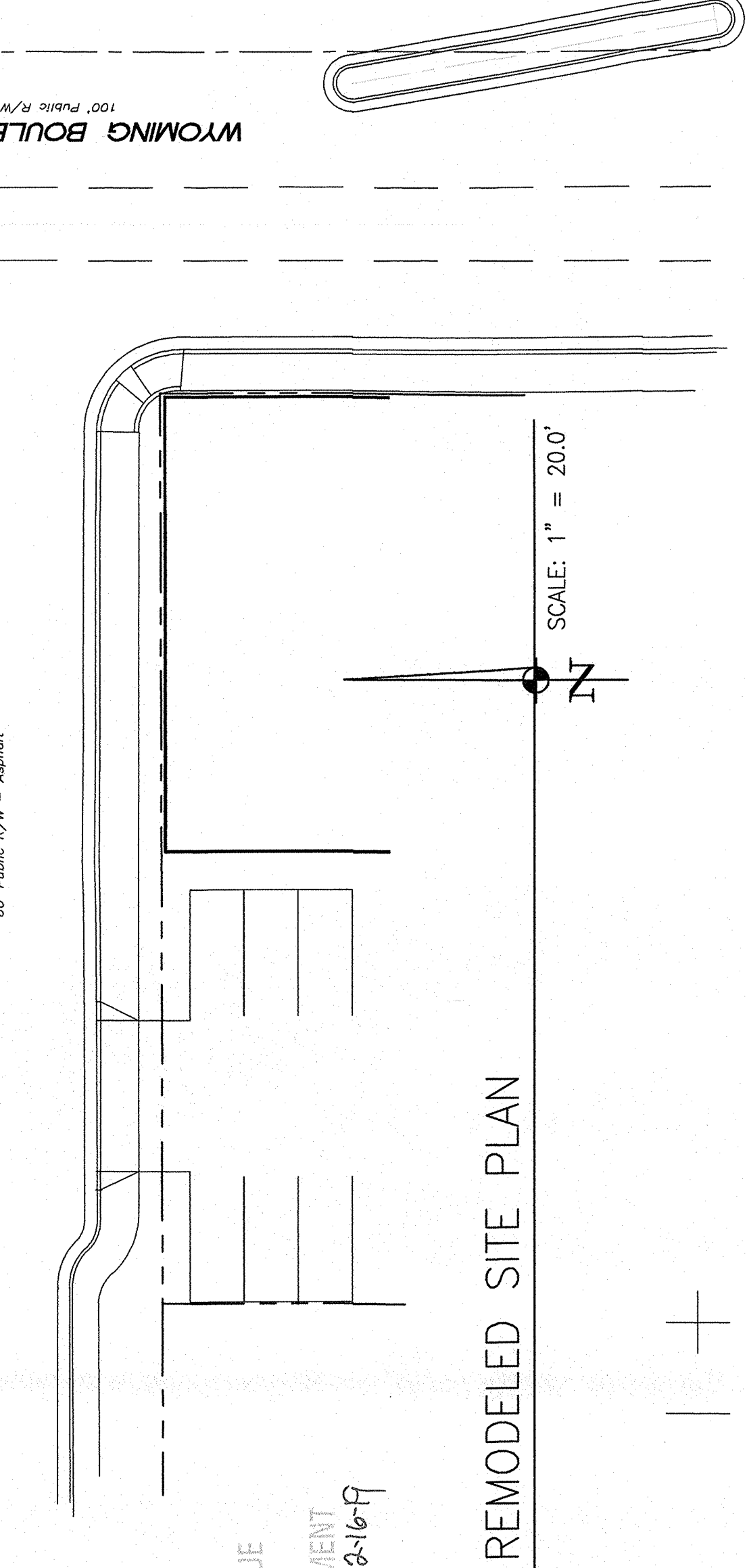
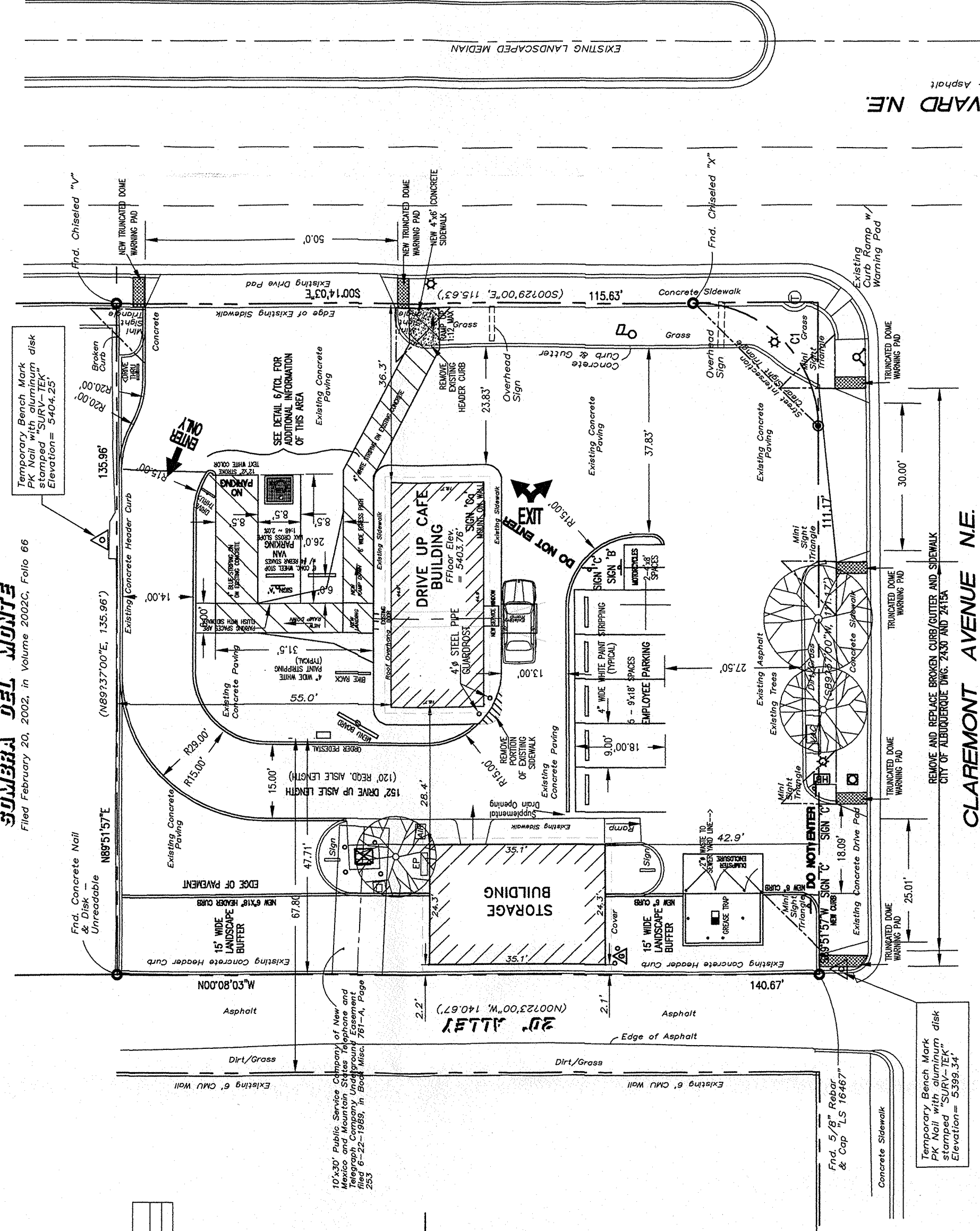
**Attachments:**

- Approved TCL Plan;
- Conditional Use Notification of Decision (Project 2019-001935; VA-2019-00004);
- Letter from James Aranda, ZEO, dated March 31, 2020; and
- Email from James Aranda, ZEO, dated May 29, 2020.

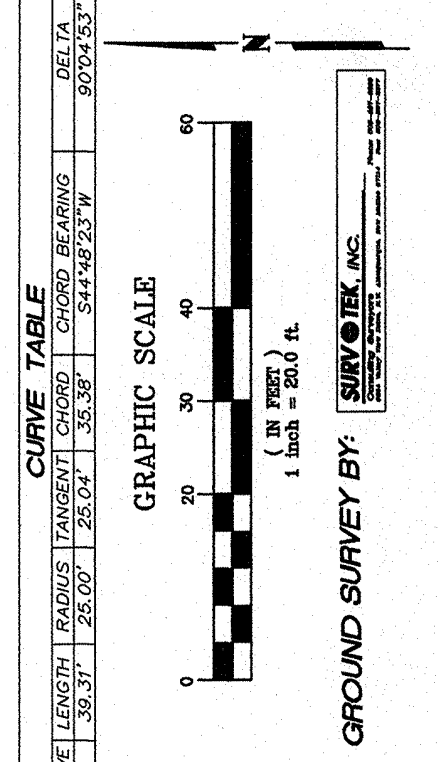
TRAFFIC CIRCULATION LAYOUT  
 APPROVED  
 [Signature]  
 Date: 1-14-20

ALL WHEELCHAIR RAMPS LOCATED WITHIN THE PUBLIC RIGHT OF WAY MUST HAVE TRUNCATED DOMES.

**NARRATIVE DESCRIPTION**  
 TRAFFIC CIRCULATION PLAN FOR 2505 WYOMING BLVD. NE 87112 CHANGE OF USE TO CONVERT AN EXISTING GAS STATION/CONVENIENCE STORE INTO A DRIVE UP ONLY FAST FOOD CAFE. NO INDOOR OR OUTDOOR DINING AREAS ARE TO BE PROVIDED. ALL FUEL DISPENSING PUMPS AND TANKS HAVE BEEN REMOVED AND PAVEMENTS HAVE BEEN REPAIRED. THE EXISTING STORE BUILDING WILL BECOME THE COMMERCIAL KITCHEN AND SUPPORT FACILITY FOR THIS LOCATION. THE EXISTING CAR WASH BUILDING WILL BECOME A CENTRAL STORAGE BUILDING FOR THE STRIPES MULTIPLE FACILITIES. THE DRIVE UP SERVICE OPERATION WAS GRANTED ZONE APPROVAL AS VA-2019-00004 PROJECT NO. 2019-001935 DATED 04-03-19. COMPLIANCE WITH THE CONDITIONS OF APPROVAL FOR THE DRIVE UP OPERATION ARE DEMONSTRATED IN THIS SUBMITAL.



- LEGEND**
- Manhole Unknown Utility
  - Storm Drain Inlet
  - Sanitary Sewer Clean-out
  - Water Meter
  - Water Valve
  - Flyrant
  - Cable Pedestal
  - Electric Pedestal
  - Electric Panel
  - Traffic Box
  - Telephone Pedestal
  - Utility Box
  - Wood Pole
  - Light Pole
  - Gas Meter
  - Handicap Parking Sign
  - Wall
  - Monitoring Well
  - Handicap Parking Space
  - Irrigation Box
  - Control Point
  - Flagpole
  - Overhead Wire
  - Parking Bumper
  - Telephone Manhole



SCALE: 1" = 20.0'

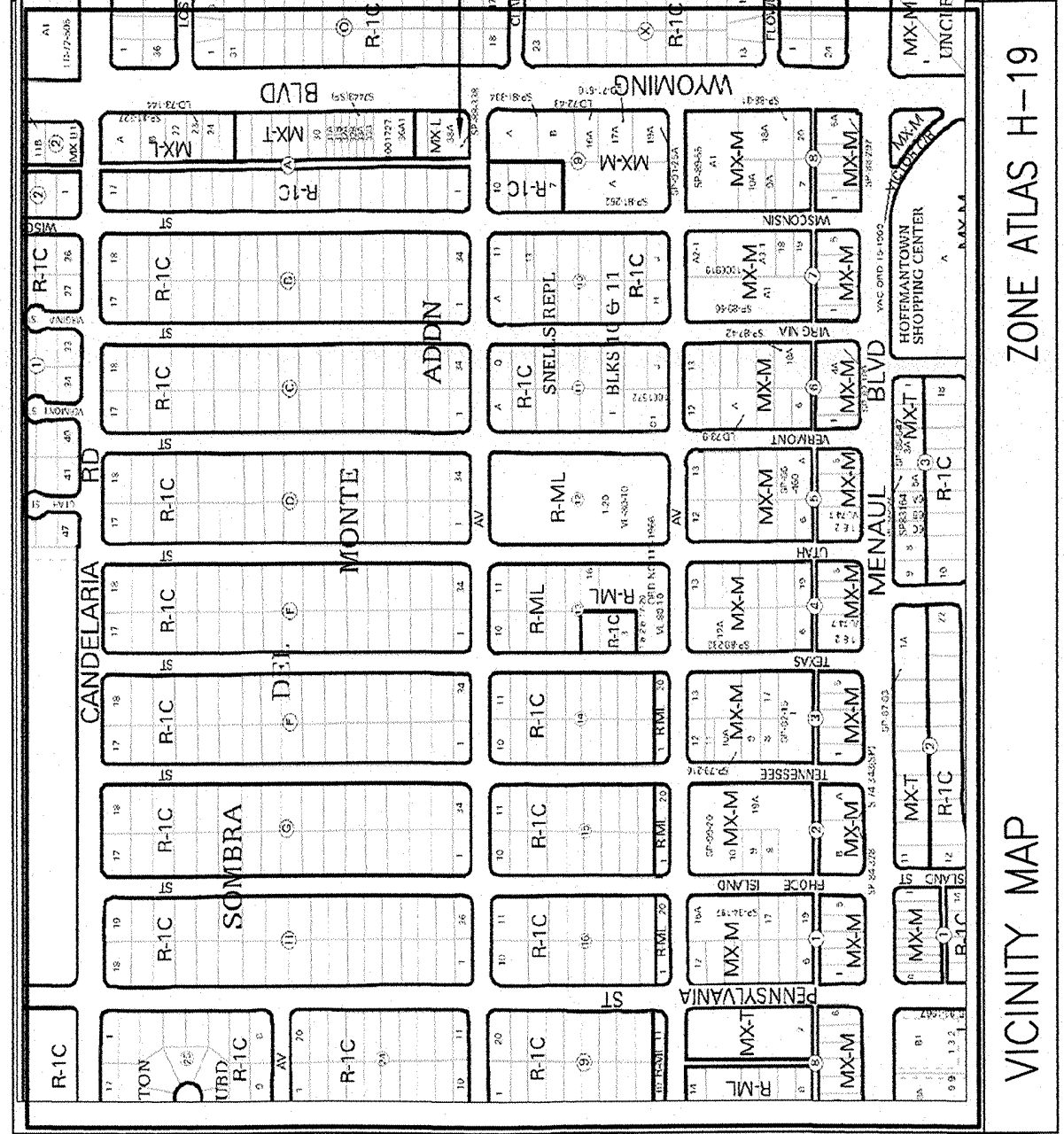
**PARKING REQUIREMENTS I.D.O. 14-16-5-5**

REQUIRED PARKING CALCULATIONS:  
 DRIVE UP FACILITY: NO REQUIREMENT  
 ACCESSIBLE PARKING: 1 SPACES  
 TOTAL SPACES REQUIRED = 1 SPACES

PARKING SPACES PROVIDED:  
 ACCESSIBLE SPACES: 2 SPACES  
 EMPLOYEE PARKING: 5 SPACES  
 MOTORCYCLE SPACES PROVIDED: 2 SPACES  
 BICYCLE SPACES PROVIDED: 3 SPACES

**LEGAL DESCRIPTION**

2505 WYOMING BLVD. NE 87112  
 LOT 38A BLOCK A, SOMBRÁ DEL MONTE  
 LOT AREA 0.4364 ACRES  
 UPC 101909591740872403  
 ZONING MX-L  
 ZONE ATLAS H-19



1 EXISTING / REMOVALS SITE PLAN  
 (TCL)

2 REMODELED SITE PLAN  
 (TCL)

CITY OF ALBUQUERQUE  
 "SOLID WASTE"  
 MANAGEMENT DEPARTMENT  
 APPROVED 01/14/20

RECEIVED  
 JAN 13 2020  
 LAND DEVELOPMENT SECTION

## ZHE Contacts for 2505 Wyoming

Sanchez, Suzanna A. &lt;suzannasanchez@cabq.gov&gt;

Fri 4/3/2020 2:14 PM

To: Charlene Johnson &lt;Johnson@consensusplanning.com&gt;

1 attachments (259 KB)

ZHE Public Noticing Req.pdf

Dear Applicant,

Below are the neighborhood associations that need to be notified of your ZHE application. Please use the attached Notice Handout for guidance.

You must give the neighborhood association **15** days to respond before you are able to submit your application.

Association Name	First Name	Last Name	Email	Alternative Email	Address Line 1	City	State	Zip	Mobile Phone
Hoffmantown NA	Stephanie	O'Guin	smurfmom@comcast.net		2711 Mesa Linda Drive NE	Albuquerque	NM	87112	5058040357
Hoffmantown NA	Pamela	Pettit			2710 Los Arboles Place NE	Albuquerque	NM	87112	
District 7 Coalition of Neighborhood Associations	David	Haughawout	davidh.d7@comcast.net	davidh2420@comcast.net	2824 Chama Street NE	Albuquerque	NM	87110	5055141965
District 7 Coalition of Neighborhood Associations	Lynne	Martin	lmartin900@aol.com		1531 Espejo NE	Albuquerque	NM	87112	

Below is a list of property owners within 100+ feet of the subject property. Please use the Public Notice of Hearing letter in the attached Notice Handout to notify the property owners surrounding the subject property. Also, please provide a receipt from the post office as proof that letters were sent out.

Owner	Owner Address	Owner Address 2
CENTRAL BAPTIST ASSOCIATION OF NEW MEXICO	2517 WYOMING BLVD NE	ALBUQUERQUE NM 87112-1027
NEW MEXICO BAPTIST FOUNDATION	1124 HERMOSA DR SE	ALBUQUERQUE NM 87108
CHAVEZ ANTHONY R	2508 WISCONSIN ST NE	ALBUQUERQUE NM 87110-3754
PHILLIPS DETLEF	2432 WISCONSIN ST NE	ALBUQUERQUE NM 87110-3752
SUNNY NM LLC	PO BOX 132077	SPRING TX 77393-2077
CUELLAR JUSTIN & CUELLAR AMANDA POWELL	1500 LOS ALAMOS AVE SW	ALBUQUERQUE NM 87104-1120
KRAUSE STEVEN R	2436 WISCONSIN NE	ALBUQUERQUE NM 87110
DLJ MORTGAGE CAPITAL INC C/O SELECT PORTFOLIO SERVICNG INC	3217 S DECKER LAKE DR	SALT LAKE CITY UT 84119-3284
SAIZ FRANK L & NANCY M	2500 WISCONSIN NE	ALBUQUERQUE NM 87110
GUO SHAOJIAO & CHEN GUO XIONG	11704 CORONADO AVE NE	ALBUQUERQUE NM 87122
WEST ANN M	2504 WISCONSIN ST NE	ALBUQUERQUE NM 87110-3754
SOUMPHONPHAKDY SOUDAVONG	8403 CLAREMONT AVE NE	ALBUQUERQUE NM 87112-1123
NEW MEXICO BAPTIST FOUNDATION	PO BOX 485	ALBUQUERQUE NM 87103-0485
JUAREZ GINO	2512 WISCONSIN ST NE	ALBUQUERQUE NM 87110
RODRIGUEZ RITA	2506 WYOMING BLVD NE	ALBUQUERQUE NM 87112
BAILEY WILLIAM MICHAEL & BAILEY IRENE	2516 WISCONSIN ST NE	ALBUQUERQUE NM 87110-3754



4/27/2020

Mail - Charlene Johnson - Outlook

HERRING PATRICK	PO BOX 74	CEDAR CREST NM 87008-0074
CIRCLE K STORES INC	1199 S BELT LINE RD SUITE 160	COPPELL TX 75019-4656

Please let me know if you have any questions.

Thank you,

*Suzie Sanchez*



**SUZIE SANCHEZ**

zhe administrative assistant

o 505.924.3894

e [suzannasanchez@cabq.gov](mailto:suzannasanchez@cabq.gov)

[cabq.gov/planning](http://cabq.gov/planning)

## Preapplication Notification

Jackie Fishman <fishman@consensusplanning.com>

Mon 4/6/2020 6:53 PM

To: smurfmom@comcast.net <smurfmom@comcast.net>

Cc: Charlene Johnson <Johnson@consensusplanning.com>

 1 attachments (419 KB)

IDOZoneAtlas Page\_H-19-Z.pdf;

Dear Hoffmantown Neighborhood Association Representative:

This email is notification that Consensus Planning is preparing an application to the Zoning Hearing Examiner (ZHE) for the property located at 2505 Wyoming Boulevard NE, which was previously a Circle K store and is zoned MX-L. The Applicant is proposing to redevelop the site using the existing building for a restaurant (Stripes) with a drive-through service window. You may recall that this project received approval of a Conditional Use for a drive through service window in the MX-L zone last year. The project is currently in the building permit review process, which brought to light that a variance was needed to allow this redevelopment project to move forward.

The City's Integrated Development Ordinance (IDO) requires in Section 5-5(l)(1)(e) that for corner properties, delivery service windows be located on the non-corner side of the site and/or at the rear of building. The proposed design locates the delivery service window on the south side of the building facing Claremont Avenue. This location is the safest and most practical location for the service window on the site. Therefore, the Applicant is requesting a variance to the IDO requirement from the ZHE.

Your association may request a meeting regarding this project by replying to this email at [fishman@consensusplanning.com](mailto:fishman@consensusplanning.com), or by phone (505) 764-9801. A meeting request must be received by April 20, 2020 and the meeting scheduled within 30 days of this request, per the IDO requirements.

Sincerely,

**Jacqueline Fishman, AICP**

Principal

Consensus Planning, Inc.

302 Eighth Street NW

Albuquerque, NM 87102

P: 505.764.9801

## Preapplication Notification

Jackie Fishman <[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)>

Mon 4/6/2020 6:56 PM

To: [davidh.d7@comcast.net](mailto:davidh.d7@comcast.net) <[davidh.d7@comcast.net](mailto:davidh.d7@comcast.net)>; [lmartin900@aol.com](mailto:lmartin900@aol.com) <[lmartin900@aol.com](mailto:lmartin900@aol.com)>

Cc: Charlene Johnson <[Johnson@consensusplanning.com](mailto:Johnson@consensusplanning.com)>

 1 attachments (419 KB)

IDOZoneAtlas Page\_H-19-Z.pdf;

Dear District 7 Coalition of Neighborhood Associations Representatives:

This email is notification that Consensus Planning is preparing an application to the Zoning Hearing Examiner (ZHE) for the property located at 2505 Wyoming Boulevard NE, which was previously a Circle K store and is zoned MX-L. The Applicant is proposing to redevelop the site using the existing building for a restaurant (Stripes) with a drive-through service window. You may recall that this project received approval of a Conditional Use for a drive through service window in the MX-L zone last year. The project is currently in the building permit review process, which brought to light that a variance was needed to allow this redevelopment project to move forward.

The City's Integrated Development Ordinance (IDO) requires in Section 5-5(l)(1)(e) that for corner properties, delivery service windows be located on the non-corner side of the site and/or at the rear of building. The proposed design locates the delivery service window on the south side of the building facing Claremont Avenue. This location is the safest and most practical location for the service window on the site. Therefore, the Applicant is requesting a variance to the IDO requirement from the ZHE.

Your association may request a meeting regarding this project by replying to this email at [fishman@consensusplanning.com](mailto:fishman@consensusplanning.com), or by phone (505) 764-9801. A meeting request must be received by April 20, 2020 and the meeting scheduled within 30 days of this request, per the IDO requirements.

Sincerely,

**Jacqueline Fishman, AICP**

Principal

Consensus Planning, Inc.

302 Eighth Street NW

Albuquerque, NM 87102

P: 505.764.9801

**From:** [Jackie Fishman](#)  
**To:** [smurfmom@comcast.net](mailto:smurfmom@comcast.net)  
**Cc:** [Charlene Johnson](#)  
**Subject:** Meeting Notification - Stripes Variance (Hoffmantown NA)  
**Date:** Monday, June 01, 2020 2:54:30 PM  
**Attachments:** [IDOZoneAtlas Page H-19-Z.pdf](#)

---

Dear Neighbor:

On April 30, 2020, you were sent a letter informing you of the upcoming hearing for a variance request to the Zoning Hearing Examiner (ZHE) Variance for Stripes Restaurant, located at 2505 Wyoming Boulevard NE. This letter is to inform you that the Variance application for Stripes Restaurant will no longer be heard by the City of Albuquerque ZHE. The City has determined that this matter is subject to a Variance-DRB and should be heard by the Development Review Board (DRB). Consensus Planning has submitted the variance application to the DRB on June 1, 2020 and has withdrawn the initial application to the ZHE. The DRB meeting for this request will be on **Wednesday, June 10, 2020** via Zoom.

You can check the agenda for the DRB agenda online here: <https://www.cabq.gov/planning/boards-commissions/development-review-board/development-review-board-agenda-archives> or call the Planning Department at 505-924-3860.

#### Variance Request Overview

The property is zoned MX-L and is located at 2505 Wyoming Boulevard NE at the southwest corner of Claremont Avenue and Wyoming Boulevard. The site previously contained a Circle K convenience store, gas station, and associated car wash. In April 2019, a conditional use for drive-through was approved by the ZHE for this project.

This project will reuse the vacant convenience store building for a drive-through restaurant and the carwash building for on-site storage related to the restaurant. Per the IDO, delivery service windows are required be located on non-corner and / or rear of the site. In order to meet this requirement, the delivery service window would be oriented west towards residential properties, which would conflict with IDO Section 5-5(l)(1)(b) that requires service windows to be oriented away from residentially-zoned areas to the maximum extent practicable. Due to this special circumstance, the service window must be located on the corner side of the site facing Claremont, and thus, will require a variance.

Please do not hesitate to contact me if you would like more information or have any questions.

**Jacqueline Fishman, AICP**  
Principal  
Consensus Planning, Inc.  
302 Eighth Street NW  
Albuquerque, NM 87102  
P: 505.764.9801

**From:** [Jackie Fishman](#)  
**To:** [davidh.d7@comcast.net](mailto:davidh.d7@comcast.net); [lmartin900@aol.com](mailto:lmartin900@aol.com)  
**Cc:** [Charlene Johnson](#)  
**Subject:** Meeting Notification - Stripes Variance (District 7 Coalition)  
**Date:** Monday, June 01, 2020 2:57:12 PM  
**Attachments:** [IDOZoneAtlas Page H-19-Z.pdf](#)

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Dear Neighbors:

On April 30, 2020, you were sent a letter informing you of the upcoming hearing for a variance request to the Zoning Hearing Examiner (ZHE) Variance for Stripes Restaurant, located at 2505 Wyoming Boulevard NE. This letter is to inform you that the Variance application for Stripes Restaurant will no longer be heard by the City of Albuquerque ZHE. The City has determined that this matter is subject to a Variance-DRB and should be heard by the Development Review Board (DRB). Consensus Planning has submitted the variance application to the DRB on June 1, 2020 and has withdrawn the initial application to the ZHE. The DRB meeting for this request will be on **Wednesday, June 10, 2020** via Zoom.

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This project will reuse the vacant convenience store building for a drive-through restaurant and the carwash building for on-site storage related to the restaurant. Per the IDO, delivery service windows are required be located on non-corner and / or rear of the site. In order to meet this requirement, the delivery service window would be oriented west towards residential properties, which would conflict with IDO Section 5-5(l)(1)(b) that requires service windows to be oriented away from residentially-zoned areas to the maximum extent practicable. Due to this special circumstance, the service window must be located on the corner side of the site facing Claremont, and thus, will require a variance.

Please do not hesitate to contact me if you would like more information or have any questions.

**Jacqueline Fishman, AICP**  
Principal  
Consensus Planning, Inc.  
302 Eighth Street NW  
Albuquerque, NM 87102  
P: 505.764.9801



June 1, 2020

Stephanie O'Guin  
2711 Mesa Linda Drive NE  
Albuquerque, New Mexico 87112

Pamela Pettit  
2710 Los Arboles Place NE  
Albuquerque, NM 87112

Landscape Architecture  
Urban Design  
Planning Services

302 Eighth St. NW  
Albuquerque, NM 87102

(505) 764-9801  
Fax 842-5495  
cp@consensusplanning.com  
www.consensusplanning.com

Dear Ms. O'Guin, Ms. Pettit, and the Hoffmantown Neighborhood Association,

On April 30, 2020, you were sent a letter informing you of the upcoming hearing for a variance request to the Zoning Hearing Examiner (ZHE) Variance for Stripes Restaurant, located at 2505 Wyoming Boulevard NE. This letter is to inform you that the Variance application for Stripes Restaurant will no longer be heard by the City of Albuquerque ZHE. The City has determined that this matter is subject to a Variance-DRB and should be heard by the Development Review Board (DRB). Consensus Planning has submitted the variance application to the DRB on June 1, 2020 and has withdrawn the initial application to the ZHE. The DRB meeting for this request will be on **Wednesday, June 10, 2020** via Zoom.

You can check the agenda for the DRB agenda online here: <https://www.cabq.gov/planning/boards-commissions/development-review-board/development-review-board-agenda-archives> or call the Planning Department at 505-924-3860.

#### Variance Request Overview

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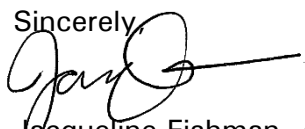
This project will reuse the vacant convenience store building for a drive-through restaurant and the carwash building for on-site storage related to the restaurant. Per the IDO, delivery service windows are required be located on non-corner and / or rear of the site. In order to meet this requirement, the delivery service window would be oriented west towards residential properties, which would conflict with IDO Section 5-5(l)(1)(b) that requires service windows to be oriented away from residentially-zoned areas to the maximum extent practicable. Due to this special circumstance, the service window must be located on the corner side of the site facing Claremont, and thus, will require a variance.

#### PRINCIPALS

James K. Strozier, FAICP  
Christopher J. Green, PLA,  
ASLA, LEED AP  
Jacqueline Fishman, AICP



Please do not hesitate to contact me if you would like more information or have any questions.

Sincerely,  
  
Jacqueline Fishman, AICP  
Principal

Enclosed: Zone Atlas Page H-19

June 1, 2020

Dear Property Owner:

On April 30, 2020, you were sent a letter informing you of the upcoming hearing for a variance request to the Zoning Hearing Examiner (ZHE) Variance for Stripes Restaurant, located at 2505 Wyoming Boulevard NE. This letter is to inform you that the Variance application for Stripes Restaurant will no longer be heard by the City of Albuquerque ZHE. The City has determined that this matter is subject to a Variance-DRB and should be heard by the Development Review Board (DRB). Consensus Planning has submitted the variance application to the DRB on June 1, 2020 and has withdrawn the initial application to the ZHE. The DRB meeting for this request will be on **Wednesday, June 10, 2020** via Zoom.

#### **REQUEST**

The Applicant, Stripes Restaurant, is proposing the redevelopment of a vacant site at 2505 Wyoming Boulevard NE that was previously a Circle K convenience store, gas station, and associated car wash. The project will reuse the vacant convenience store building for a drive-through restaurant and the carwash building for on-site storage related to the primary use of restaurant. The Applicant is requesting a variance to the IDO requirement that delivery service windows are to be located at the rear or non-corner side of the site. However, orienting the delivery service window towards the residentially zoned property to the west would conflict with other IDO regulations. Therefore, the Applicant is requesting that the delivery service window be allowed to face towards Claremont, which requires a variance.

Due to ongoing COVID-19 safety measures, all public hearings and meetings for the City of Albuquerque will be held remotely. The DRB meeting agendas, Zoom Remote Meeting links, and call-in numbers provided by the City of Albuquerque are available on the DRB website at <https://www.cabq.gov/planning/boards-commissions/development-review-board/development-review-board-agenda-archives>.

Please feel free to contact Jacqueline Fishman at (505) 764-9801 or [fishman@consensusplanning.com](mailto:fishman@consensusplanning.com) if you have any questions or would like more information.

Sincerely,

Consensus Planning, Inc.

Attached: Zone Atlas H-19



Eighth St. NW  
Albuquerque, NM 87102

FIRST-CLASS



PITNEY BOWES  
US POSTAGE  
02 1P \$ 000.50<sup>0</sup>  
0002118651 JUN 01 2020  
MAILED FROM ZIP CODE 87102

Pamela Pettit  
2710 Los Arboles Place NE  
Albuquerque, NM 87112

Eighth St. NW  
Albuquerque, NM 87102

FIRST-CLASS



PITNEY BOWES  
US POSTAGE  
02 1P \$ 000.50<sup>0</sup>  
0002118651 JUN 01 2020  
MAILED FROM ZIP CODE 87102

BAILEY WILLIAM MICHAEL & BAILEY IRENE  
2516 WISCONSIN ST NE  
ALBUQUERQUE, NM 87110-3754

2 Eighth St. NW  
Albuquerque, NM 87102

FIRST-CLASS



PITNEY BOWES  
US POSTAGE  
02 1P \$ 000.50<sup>0</sup>  
0002118651 JUN 01 2020  
MAILED FROM ZIP CODE 87102

CENTRAL BAPTIST ASSOCIATION OF NEW  
MEXICO  
2517 WYOMING BLVD NE  
ALBUQUERQUE, NM 87112-1027

2 Eighth St. NW  
Albuquerque, NM 87102



RODRIGUEZ RITA  
2506 WYOMING BLVD NE  
ALBUQUERQUE NM 87112

2 Eighth St. NW  
Albuquerque, NM 87102



HERRING PATRICK  
PO BOX 74  
CEDAR CREST NM 87008-0074



NEW MEXICO BAPTIST FOUNDATION  
1124 HERMOSA DR SE  
ALBUQUERQUE NM 87108

FIRST-CLASS



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MAILED FROM ZIP CODE 87102

CHAVEZ ANTHONY R  
2508 WISCONSIN ST NE  
ALBUQUERQUE NM 87110-3754

FIRST-CLASS



PITNEY BOWES  
US POSTAGE  
02 1P \$ 000.50<sup>0</sup>  
0002118651 JUN 01 2020  
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CUELLAR JUSTIN & CUELLAR AMANDA  
POWELL  
1500 LOS ALAMOS AVE SW  
ALBUQUERQUE NM 87104-1120

FIRST-CLASS



PITNEY BOWES  
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0002118651 JUN 01 2020  
MAILED FROM ZIP CODE 87102

SUNNY NM LLC  
PO BOX 132077  
SPRING TX 77393-2077

FIRST-CLASS



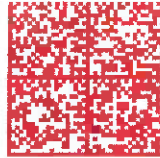
US POSTAGE

02 1P  
0002118651

**\$ 000.50<sup>0</sup>**  
JUN 01 2020  
MAILED FROM ZIP CODE 87102

PHILLIPS DETLEF  
2432 WISCONSIN ST NE  
ALBUQUERQUE NM 87110-3752

FIRST-CLASS



US POSTAGE

02 1P  
0002118651

**\$ 000.50<sup>0</sup>**  
JUN 01 2020  
MAILED FROM ZIP CODE 87102

KRAUSE STEVEN R  
2436 WISCONSIN NE  
ALBUQUERQUE NM 87110

FIRST-CLASS



US POSTAGE

02 1P  
0002118651

**\$ 000.50<sup>0</sup>**  
JUN 01 2020  
MAILED FROM ZIP CODE 87102

DLJ MORTGAGE CAPITAL INC C/O SELECT  
PORTFOLIO SERVICNG INC  
3217 S DECKER LAKE DR  
SALT LAKE CITY UT 84119-3284

FIRST-CLASS



US POSTAGE

02 1P

\$ 000.50<sup>0</sup>

0002118651

JUN 01 2020

MAILED FROM ZIP CODE 87102

GUO SHAOJIAO & CHEN GUO XIONG  
11704 CORONADO AVE NE  
ALBUQUERQUE NM 87122

FIRST-CLASS



US POSTAGE

02 1P

\$ 000.50<sup>0</sup>

0002118651

JUN 01 2020

MAILED FROM ZIP CODE 87102

WEST ANN M  
2504 WISCONSIN ST NE  
ALBUQUERQUE NM 87110-3754

FIRST-CLASS



US POSTAGE

02 1P

\$ 000.50<sup>0</sup>

0002118651

JUN 01 2020

MAILED FROM ZIP CODE 87102

SAIZ FRANK L & NANCY M  
2500 WISCONSIN NE  
ALBUQUERQUE NM 87110

FIRST-CLASS



US POSTAGE

02 1P \$ 000.50<sup>0</sup>  
0002118651 JUN 01 2020  
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SOUMPHONPHAKDY SOUDAVONG  
8403 CLAREMONT AVE NE  
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FIRST-CLASS



US POSTAGE

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JUAREZ GINO  
2512 WISCONSIN ST NE  
ALBUQUERQUE NM 87110

FIRST-CLASS



US POSTAGE

02 1P \$ 000.50<sup>0</sup>  
0002118651 JUN 01 2020  
MAILED FROM ZIP CODE 87102

NEW MEXICO BAPTIST FOUNDATION  
PO BOX 485  
ALBUQUERQUE NM 87103-0485



CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

Stripes Restaurant requests a conditional use to allow a drive-through on Lot 38A, Block A, Sombra Del Monte, located at 2505 Wyoming Blvd NE, zoned MX-L [Section 14-16-4-2]

Special Exception No:..... **VA-2019-00004**  
Project No: ..... **Project# 2019-001935**  
Hearing Date: ..... 03-19-19  
Closing of Public Record: ..... 03-19-19  
Date of Decision: ..... 04-03-19

On the 19th day of March, 2019, Jackie Fishman, Consensus Planning, agent for property owner Stripes Restaurant (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a drive-through (“Application”) upon the real property located at 2505 Wyoming Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a drive-through.
2. The City of Albuquerque Code of Ordinances Section 14-16-6-6(A)(3) (Review and Decision Criteria– Conditional Use) reads: *“An application for a Conditional Use Approval shall be approved if it meets all of the following criteria:*
  - (a) *It is consistent with the ABC Comp. Plan, as amended;*
  - (b) *It complies with all applicable provisions of the IDO, including, but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property;*
  - (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*
  - (d) *It will not create material adverse impacts on other land in the surrounding area, through increases in traffic congestion, parking congestion noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts;*
  - (e) *It will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am;*
  - (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).
4. Jacqueline Fishman for Consensus Planning, agent for property owner Stripes Restaurant, appeared and gave evidence in support of the application.
5. All property owners within 100 feet and affected neighborhood association(s) were notified.
6. Hoffmantown Neighborhood Association is the affected NA.
7. The subject property is currently zoned MX-L.

8. Transportation reports no objections to the proposed use.
9. The Applicant is proposing the redevelopment of a site that was a previous Circle-K store and gas station and car wash.
10. A site plan and photographs of the subject property were submitted.
11. The requested conditional accessory drive-through will be utilized by the restaurant proposed on the subject property.
12. The project will reuse the vacant store building for a drive-through restaurant and the car-wash building for on-site storage related to the primary use.
13. There will be no customer seating inside the restaurant.
14. The subject property is located in an Area of Change adjacent to an Area of Consistency as designated by the ABC Comp. Plan.
15. The subject property is located on Wyoming Blvd and Claremont Ave NE.
16. Wyoming Blvd. is a Principal Arterial and a multi-Modal Corridor as designated by the ABC Comp. Plan.
17. The existing site has one driveway from Wyoming Blvd and two driveways from Claremont Ave.
18. The subject property is .43 acres in area and currently vacant with two structures on the site.
19. The adjacent neighborhood to the west is zoned R-1C.
20. The proposed use will provide an appropriate transition to the adjacent single-family development.
21. There is a 20 foot alley adjacent to the west side of the property.
22. The proposed site design includes a 15 foot landscape barrier.
23. All residential, single family properties to the west have 6 foot fences/walls abutting the 20 foot alley.
24. The vacant car wash structure abuts the alley on the west property line.
25. The proposed use as a drive-through restaurant is appropriate in this location as it is located on Wyoming Blvd, a multi-Modal Corridor and Principal Arterial and facilitates development in an area of Change with available urban services.
26. The proposed use is consistent with and will complement present uses along Wyoming and Claremont NE.
27. The proposed use will encourage infill development in appropriate ways, which is consistent with ABC Comp. Plan, Policy 2.4.2.
28. The proposed use will redevelop a vacant property along a Principal Arterial, which is utilized by passenger vehicles, bicycle, transit and pedestrians.
29. The subject property is served by ABQ Ride, routes 31 and Crosstown Commuter Route 98, the Claremont bike path.
30. The proposed use will encourage and focus new development and growth in Centers and Corridors, which is consistent with ABC Comp. Plan, Policy 2.4.6.
31. The proposed use will redevelop a blighted and vacant site that is served by existing infrastructure (water and sewer) and public facilities.
32. The proposed use will support additional growth in areas with existing infrastructure and public facilities, which is consistent with ABC Comp. Plan, Policy 5.3.1.
33. The subject property is located between vacant retail to the south and offices to the north.
34. The 20 foot alley and, landscaping and fencing protects the existing residential neighborhood.



35. The proposed use will encourage infill and compact development in areas of vacant land contiguous to existing urban facilities and services, and ensure the integrity of the existing neighborhood, which is consistent with ABC Comp. Plan, Policy 5.5.5.g.
36. The proposed use will further the redevelopment and reuse of blighted and underutilized properties.
37. The requested use will direct growth and more intense development to Centers, Corridors, where change is encouraged, which is consistent with ABC Comp. Plan, Policy 5.6.2.
38. The proposed use will the existing one-story structure, which are consistent with the height of the surrounding buildings.
39. The existing setbacks along Wyoming and Claremont meet or exceed the IDO requirements.
40. Frank Saiz, 2500 Wisconsin NE, 87110, appeared and gave evidence in support of the requested use.
41. He is the owner of residential property adjacent to the subject property.
42. He complains that the vacant property had created transients and crime to the neighborhood and he supports the requested use.
43. He has resided in the neighborhood since 1982.
44. The requested use will provide appropriate transition in Areas of Change for development abutting Areas of Consistency, which is consistent to ABC Comp. Plan, Policy 5.6.4.
45. The requested use is regulated by Section 14-16-4-3(F)4 **Drive-through or Drive-up Facility**.
46. The requested use is also regulated by Development Standards Section 14-16-5-5(I)(1) **Drive-through or Drive-up Facility Design**, and Section 14-16-5-5(I)(1) **Vehicle Stacking and Drive-Through or Drive-up Facilities**.
47. The site plan addresses and satisfies placement, stacking and buffering requirements consistent with the Development Standards.
48. The hours of operation for the proposed restaurant will comply with the IDO requirements and will be closed between 8:00 pm and 6:00 am.
49. The proposed use complies with all applicable provisions of the IDO, Use-specific Standards applicable to the use, and any prior permit or approval affecting the property as required by Section 14-16-6-6(A)(3)(b).
50. The proposed use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community, as required by Section 14-16-6-6(A)(3)(c).
51. The proposed use will not create material adverse impacts on other land in the surrounding area, through increases in traffic congestion, parking congestion noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts, as required by Section 14-16-6-6(A)(3)(d).
52. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 8:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e).
53. The proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f).
54. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
55. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow a drive-through.

CONDITIONS:

The final site plan shall comply with regulations contained in Specific Use Standards, Section 14-16-4-3(F)4 **Drive-through or Drive-up Facility**; and Development Standards Section 14-16-5-5(I)(1) **Drive-through or Drive-up Facility Design**, and Section 14-16-5-5(I)(1) **Vehicle Stacking and Drive-Through or Drive-up Facilities**.

APPEAL:

If you wish to appeal this decision, you must do so by April 18, 2019 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Stripes Restaurant, 5300 High Canyon Trail NE, 87111  
Jackie Fishman, Consensus Planning, 302 Eighth ST NW, 87102  
Frank Saiz, 2500 Wisconsin NE, 87110

## Jackie Fishman

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**From:** Aranda, James M. <jmaranda@cabq.gov>  
**Sent:** Friday, May 29, 2020 9:52 AM  
**To:** Jackie Fishman  
**Cc:** Wolfley, Jolene; Patten-Quintana, Lorena; mwarchitect@comcast.net; Gary Hines; Williams, Brennon; Brito, Russell D.  
**Subject:** RE: Maximum Extent Practicable  
**Importance:** High

Jackie,  
I've discussed the matter with the Zoning Committee. Upon further review, I concur that a DRB waiver will be the appropriate procedure as IDO 6-6(N)(1) does not apply to Section 5-5. That said, please proceed with preparing your DRB waiver application (per your email from 4:29pm yesterday afternoon).

I apologize for any confusion earlier.

Respectfully,

JMA



### JAMES M. ARANDA, MCRP

*el/he/him/his*

deputy director | planning department

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m 505.803.6378

e [jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)

[cabq.gov/planning](http://cabq.gov/planning)

---

**From:** Jackie Fishman <fishman@consensusplanning.com>  
**Sent:** Thursday, May 28, 2020 6:32 PM  
**To:** Aranda, James M. <jmaranda@cabq.gov>  
**Cc:** Wolfley, Jolene <jwolfley@cabq.gov>; Patten-Quintana, Lorena <lpatten-quintana@cabq.gov>; mwarchitect@comcast.net; Gary Hines <ghines125@comcast.net>; Williams, Brennon <bnwilliams@cabq.gov>; Brito, Russell D. <RBrito@cabq.gov>  
**Subject:** RE: Maximum Extent Practicable

James - Thanks for your response. I'm glad to hear that the issue of the variance to the location of the delivery service window was discussed whether it should be ZHE or DRB and the Jolene was part of the discussion. Honestly, I think it should be a ZHE matter as there is no technical engineering issue with a service delivery window that faces a street. The regulation that we are seeking the variance from is in Section 5-5 Parking and Loading:

**5-5(l)(1)(e)** For corner sites, delivery service windows or facilities shall be located on the non-corner side of the site and/or at the rear of the building.

Here are the IDO sections that address variances per ZHE and DRB:

**6-6(N) VARIANCE – ZHE**

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

**6-6(N)(1) Applicability**

**6-6(N)(1)(a)** This Subsection 14-16-6-6(N) applies to all requests for Variances from an IDO standard other than the following:

1. Standards in Section 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or **14-16-5-5 (Parking and Loading)**, or in the DPM (which require a Variance –DRB per Section 14-16-6-6(L)).
2. Variances to IDO standards requested in applications for a Site Plan – EPC (which requires a Variance – EPC per Subsection 14-16-6-6(M)).

**6-6(L) VARIANCE – DRB**

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

**6-6(L)(1) Applicability**

This Subsection 14-16-6-6(L) applies to 6-6(L)(1)(a) Any application for a Variance to standards in Sections 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or **14-16-5-5 (Parking and Loading)**, or the DPM.

**Jacqueline Fishman, AICP**

Principal  
Consensus Planning, Inc.  
302 Eighth Street NW  
Albuquerque, NM 87102  
P: 505.764.9801

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**From:** Aranda, James M. <[jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)>

**Sent:** Thursday, May 28, 2020 6:14 PM

**To:** Jackie Fishman <[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)>

**Cc:** Wolfley, Jolene <[jwolfley@cabq.gov](mailto:jwolfley@cabq.gov)>; Patten-Quintana, Lorena <[patten-quintana@cabq.gov](mailto:patten-quintana@cabq.gov)>; [mwarchitect@comcast.net](mailto:mwarchitect@comcast.net); Gary Hines <[ghines125@comcast.net](mailto:ghines125@comcast.net)>; Williams, Brennan <[bnwilliams@cabq.gov](mailto:bnwilliams@cabq.gov)>; Brito, Russell D. <[RBrito@cabq.gov](mailto:RBrito@cabq.gov)>

**Subject:** Re: Maximum Extent Practicable

Jackie et al,

Apologies for my lack of response—I'm out of town and my internet and cell service are very spotty so I hope you receive this correspondence in good time.

When the zoning committee (which includes DRB Chair Jolene Wolfley) met to review your case we discussed at length whether the path forward was under the purview of the ZHE or DRB. Technically the location of the service window is

subject to both zoning provisions in the IDO and various design provisions and/or other technical standards (as it can be viewed as both a use and design feature) which muddied the path forward to a degree. In being asked to interpret specific provisions of the IDO, my letter of interpretation was clear and specific that the provisions of IDO 5-5(1)(1)(e) were not met and therefore a variance to that provision is required. Being that it is a variance to a zoning standard, ZHE appeared to make the most sense.

Upon my return tomorrow morning I will confer with members of the committee regarding your question and will make a final interpretation as to which variance is appropriate. To assist me in better understanding your reading of the IDO (and to avoid similar situations in the future) please let me know which particular IDO provision you are referring to that states that the location of a delivery service window is under the purview of the DRB.

JMA

**JAMES M. ARANDA, MCRP**

*el/he/him/his*

**deputy director | planning department**

**o** 505.924.3361

**m** 505.803.6378

**e** [jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)

**cabq.gov/planning**

Sent from my iPhone

On May 28, 2020, at 4:49 PM, Jackie Fishman <[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)> wrote:

Hello again –

In reading the DRB variance procedures, it appears that a variance at DRB is a minor procedure and notice is provided via email only to the NAs. Therefore, our interpretation is that this is a minor procedure that could be heard on June 10<sup>th</sup>.

Please confirm.

**Jacqueline Fishman, AICP**

Principal

Consensus Planning, Inc.

302 Eighth Street NW

Albuquerque, NM 87102

P: 505.764.9801

---

**From:** Jackie Fishman

**Sent:** Thursday, May 28, 2020 4:29 PM

**To:** Aranda, James M. <[jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)>; Wolfley, Jolene <[jwolfley@cabq.gov](mailto:jwolfley@cabq.gov)>; [LPatten-Quintana@cabq.gov](mailto:LPatten-Quintana@cabq.gov) ([LPatten-Quintana@cabq.gov](mailto:LPatten-Quintana@cabq.gov)) <[lpatten-quintana@cabq.gov](mailto:lpatten-quintana@cabq.gov)>

**Cc:** [mwarchitect@comcast.net](mailto:mwarchitect@comcast.net); Gary Hines <[ghines125@comcast.net](mailto:ghines125@comcast.net)>; Williams, Brennon <[bnwilliams@cabq.gov](mailto:bnwilliams@cabq.gov)>

**Subject:** RE: Maximum Extent Practicable

**Importance:** High

Jolene, James, and Lorena –

It has come to my attention this afternoon that we may have an issue with our application to the ZHE for variance to **Section 5-5(I)(1)(e)** that is scheduled for the June 16<sup>th</sup> ZHE hearing. Our application was based on the determination by the ZEO that we needed a variance **..."pursuant to IDO Section 14-16-6-6-(N)"** which is ZHE (see attached letter from James Aranda dated March 31, 2020). Lorena contacted me this morning to ask if the application was correct in going to the ZHE and I responded yes, because that was my understanding from the letter. As I now read the IDO, it appears that the variance to the placement of the delivery service window is under the purview of the DRB.

My question is, can this application proceed as directed by the ZEO or do we need to apply to the DRB? The neighborhoods and property owners have been notified and there hasn't been any concerns. We are about to renotify to let the NAs and property owners know of the Zoom hearing details. This project has stalled out at building permit waiting for this variance, so the timing on this is critical. If you determine that it must go to DRB, then I will make application tomorrow for the hearing on June 24th.

Jolene and/or James, can you please call me at 401-0233 this afternoon.

**Jacqueline Fishman, AICP**

Principal

Consensus Planning, Inc.

302 Eighth Street NW

Albuquerque, NM 87102

P: 505.764.9801

---

**From:** Aranda, James M. <[jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)>

**Sent:** Tuesday, March 31, 2020 10:03 AM

**To:** Jackie Fishman <[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)>

**Cc:** [mwarchitect@comcast.net](mailto:mwarchitect@comcast.net); Gary Hines <[ghines125@comcast.net](mailto:ghines125@comcast.net)>; Williams, Brennon <[bnwilliams@cabq.gov](mailto:bnwilliams@cabq.gov)>; Garcia, Carl A. <[cagarcia@cabq.gov](mailto:cagarcia@cabq.gov)>

**Subject:** Re: Maximum Extent Practicable

Jackie,

My sincerest apologies for the omission of my interpretation regarding IDO §5-5(I)(1)(b). Somewhere in the editing process it was struck out and I failed to replace it in the final draft. My amended interpretation statement is:

Upon further review of your request, it is my interpretation that the proposed location of the drive-through service window meets the requirement of IDO §5-5(I)(1)(b) to the maximum extent practicable. IDO §5-5(I)(1)(b) explicitly states that *"Drive-through service windows shall be oriented away from pedestrian areas, residentially-zoned areas, and public streets to the maximum extent practicable."*

It is also my interpretation that that the proposed location of the drive-through service window fails to meet an explicit requirement of IDO §5-5(I)(1)(e), which states that *"[f]or corner sites, delivery service windows or facilities shall be located on the non-corner side of the site and/or at the rear of building."* Therefore, a variance, pursuant to IDO §14-16-6-6(N), would be required in this particular matter.

My interpretation is based on the following findings:

- According to Sheet C1 of the Remodeled Site Plan, the proposed delivery service window is located on the south side of the site, which is identified as a corner side of the site. Furthermore, the delivery service window is located closer to the middle of the site than it is to the rear. Therefore, the proposed location of the service window fails to meet two explicit requirements of IDO §5-5(l)(1)(e).
- “Maximum extent practicable” explicitly applies to IDO §5-5(l)(1)(b); however, IDO §5-5(l)(1)(e) contains no “maximum extent practicable” clause, and no legislatively stated allowance for statutory or discretionary authority to administratively waive or deviate from the standards of this provision.

In conclusion, upon review of the applicable provisions of the IDO, it is my interpretation that the proposed drive-through location meets the requirement of IDO §5-5(l)(1)(b) to the maximum extent practicable, however the proposed delivery service window location fails to meet the explicit requirements of IDO §5-5(l)(1)(e). This failure is due to special circumstances applicable to the configuration of the subject property. Because IDO §5-5(l)(1)(e) contains no “maximum extent practicable” language, the IDO does not provide statutory authority for the Planning Director or designee to waive or deviate from the standards of IDO §5-5(l)(1)(e).

I recognize and appreciate that this project is a creative example of the adaptive re-use of an underutilized property and generally the type of development the Planning Department encourages. Thus, a variance from the requirements in IDO §5-5(l)(1)(e) would be recommended. I have attached an official correspondence containing this interpretation for your records.

I’ve updated the official interpretation correspondence and re-attached it as well. Also thank you for your feedback regarding review and approval of site plans as an administrative staff procedure. I’ve shared your feedback with Russell.

Stay Healthy!

JMA

<image001.jpg>

**JAMESM. ARANDA, MCRP**

*el/he/him/his*

deputy director | planning department

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On Mar 26, 2020, at 12:58 PM, Jackie Fishman <[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)> wrote:

Thanks, James. I think this is yet another example of why the drive through regs, especially when its for a site that’s not a designated center or corridor, is a problem that the EPC recognized and unanimously recommended approval of Councilor Jones’ amendment. Unfortunately, we have no idea when the CC will be taking action on the

500+ amendments. I will forward this to a couple of the Councilors as another reason why the amendments are needed.

One question I had was in regard to IDO §5-5(I)(1)(b). While you and Brennon don't have the authority to grant variances to IDO §5-5(I)(1)(e), you didn't state in your letter your determination on IDO §5-5(I)(1)(b), "to the extent practicable". If the owner decides to go back through the 3-4 month variance process for (e), I don't want him to end up in the same place again later on (b). Please address this issue.

On a side note, while the intent was to streamline the Site Plan-administrative process, having the developer find out they have to start over after they have completed CDs is terrible. Consensus Planning is typically not involved by that point in the process and most, if not all, architects I know don't fully understand the IDO. Maybe the Planning Dept and City Council staff should discuss a brief process for IDO review and approval of site plans as an administrative staff procedure. Just a thought...

Thanks and stay safe,

**Jacqueline Fishman, AICP**

Principal  
Consensus Planning, Inc.  
302 Eighth Street NW  
Albuquerque, NM 87102  
P: 505.764.9801

---

**From:** Aranda, James M. <[jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)>  
**Sent:** Thursday, March 26, 2020 11:21 AM  
**To:** Jackie Fishman <[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)>  
**Cc:** [mwarchitect@comcast.net](mailto:mwarchitect@comcast.net); Gary Hines <[ghines125@comcast.net](mailto:ghines125@comcast.net)>; Williams, Brennon <[bnwilliams@cabq.gov](mailto:bnwilliams@cabq.gov)>  
**Subject:** Re: Maximum Extent Practicable

Jackie:

Thank you for your request to review and interpret whether or not the proposed location and orientation of a Drive-Through Facility in conjunction with a restaurant meets the provisions within Integrated Development Ordinance (IDO) §5-5(I)(1). Upon further review of your request, I have determined that the proposed location of the drive-through service window fails to meet an explicit requirement of IDO §5-5(I)(1)(e), which states that "*[f]or corner sites, delivery service windows or facilities shall be located on the non-corner side of the site and/or at the rear of building.*" Therefore, a variance, pursuant to IDO §14-16-6-6(N), would be required in this matter.

My interpretation is based on the following findings:

- According to Sheet C1 of the Remodeled Site Plan, the proposed delivery service window is located on the south side of the site, which is identified as a corner side of the site. Furthermore, the delivery service window is located closer to the middle of the site than it is to the rear. Therefore, the proposed location of the service window fails to meet two explicit requirements of IDO §5-5(I)(1)(e).



- “Maximum extent practicable” explicitly applies to IDO §5-5(l)(1)(b); however, IDO §5-5(l)(1)(e) contains no “maximum extent practicable” clause, and no legislatively stated allowance for statutory or discretionary authority to administratively waive or deviate from the standards of this provision.

In conclusion, upon review of the applicable provisions of the IDO, it is my interpretation that the proposed drive-through location fails to meet the explicit requirements of IDO §5-5(l)(1)(e). This failure is due to special circumstances applicable to the configuration of the subject property. Because IDO §5-5(l)(1)(e) contains no “maximum extent practicable” language, the IDO does not provide statutory authority for the Planning Director or designee to waive or deviate from the standards of IDO §5-5(l)(1)(e).

I recognize and appreciate that this project is a creative example of the adaptive re-use of an underutilized property and generally the type of development the Planning Department encourages. Thus, a variance from the requirements in IDO §5-5(l)(1)(e) would be recommended. I have attached an official correspondence containing this interpretation for your records.

JMA

<image001.jpg>

JAMES M. ARANDA, MCRP  
deputy director | planning department  
o 505.924.3361  
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e [jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)  
[cabq.gov/planning](http://cabq.gov/planning)

On Mar 13, 2020, at 2:33 PM, Jackie Fishman  
<[fishman@consensusplanning.com](mailto:fishman@consensusplanning.com)> wrote:

Hi James and Jacobo –

I have attached a letter requesting your determination on a drive through configuration within the MX-L zone. As you’ll see in my letter, the project is in building permit review and was previously approved as a conditional use by the ZHE and the TCL was approved by City Transportation. This is a redevelopment site that will be utilizing the existing structures. Zoning disapproved the site plan pending your determination.

Please let me know if you have any questions or need additional

information.

Thanks and have a great weekend!

Jacqueline Fishman, AICP  
Principal  
Consensus Planning, Inc.  
302 Eighth Street NW  
Albuquerque, NM 87102  
P: 505.764.9801

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This message has been analyzed by Deep Discovery Email Inspector.

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This message has been analyzed by Deep Discovery Email Inspector.

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This message has been analyzed by Deep Discovery Email Inspector.

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This message has been analyzed by Deep Discovery Email Inspector.

# CITY OF ALBUQUERQUE

## PLANNING DEPARTMENT ADMINISTRATION

600 2nd Street NW, 3rd Floor  
Albuquerque, NM 87102  
Tel: (505) 924-3339



March 31, 2020

Ms. Jaqueline Fishman, AICP  
Consensus Planning  
302 Eighth St. NW  
Albuquerque, NM 87102

Ms. Fishman:

Thank you for your request to review and interpret whether or not the proposed location and orientation of a Drive-Through Facility in conjunction with a restaurant meets the provisions within Integrated Development Ordinance (IDO) §5-5(l)(1). The subject property is 0.4364 acres in size. The site is zoned MX-L and located on the northwest corner of Wyoming Boulevard and Claremont Avenue NE. The site was previously in use as a Circle K convenience store and gas station. Per IDO §4-2, Allowable Uses, a Drive-through or Drive-up Facility is a "Conditional Accessory" use within the MX-L zone district. Upon further review of your request, it is my interpretation that the proposed location of the drive-through service window meets the requirement of IDO §5-5(l)(1)(b) to the maximum extent practicable. IDO §5-5(l)(1)(b) explicitly states that *"Drive-through service windows shall be oriented away from pedestrian areas, residentially-zoned areas, and public streets to the maximum extent practicable."* It is also my interpretation that that the proposed location of the drive-through service window fails to meet an explicit requirement of IDO §5-5(l)(1)(e), which states that *"[f]or corner sites, delivery service windows or facilities shall be located on the non-corner side of the site and/or at the rear of building."* Therefore, a variance, pursuant to IDO §14-16-6-6(N), would be required in this particular matter.

My interpretation is based on the following findings:

- According to Sheet C1 of the Remodeled Site Plan, the proposed delivery service window is located on the south side of the site, which is identified as a corner side of the site. Furthermore, the delivery service window is located closer to the middle of the site than it is to the rear. Therefore, the proposed location of the service window fails to meet two explicit requirements of IDO §5-5(l)(1)(e).
- "Maximum extent practicable" explicitly applies to IDO §5-5(l)(1)(b); however, IDO §5-5(l)(1)(e) contains no "maximum extent practicable" clause, and no legislatively stated allowance for statutory or discretionary authority to administratively waive or deviate from the standards of this provision.

In conclusion, upon review of the applicable provisions of the IDO, it is my interpretation that the proposed drive-through location meets the requirement of IDO §5-5(l)(1)(b) to the maximum extent practicable, however the proposed delivery service window location fails to meet the explicit requirements of IDO §5-5(l)(1)(e). This failure is due to special circumstances applicable to the configuration of the subject property. Because IDO §5-5(l)(1)(e) contains no "maximum extent practicable" language, the IDO does not provide statutory authority for the Planning Director or designee to waive or deviate from the standards of IDO §5-5(l)(1)(e). I recognize and appreciate that this project is a creative example of the adaptive re-use of an underutilized property and generally the type of development the Planning Department encourages. Thus, a variance from the requirements in IDO §5-5(l)(1)(e) would be recommended.

Respectfully,

James M. Aranda, MCRP  
Deputy Director and Zoning Enforcement Officer,  
Albuquerque Planning Department