



# 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

**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 15<sup>th</sup> 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 Commission<sup>1</sup> 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

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<sup>1</sup>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.” (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.<sup>2</sup>

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

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<sup>2</sup> The Annual Update of the IDO has an amendment that makes the review of a sidewalk installation a “sidewalk waiver” and restores the review criteria that was originally in the IDO before the May 2019 Interim Procedure. The IDO Annual Update would make the DRB decision on a sidewalk ‘waiver’ appealable to the LUHO. The EPC would then no longer be involved. The Annual Update of the IDO is pending before the City Council.

sidewalks in the 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 15<sup>th</sup> 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.



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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