

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

APPEAL NO. AC-20-6

Project PR-2019-002811; SD-2019-00158; VA-2019-00288

RICHARD CHAVEZ, Appellant,

1 This is an appeal from a decision of the Environmental Planning Commission (EPC) in
2 which the EPC denied an appeal and upheld a decision of the Development Review Board
3 (DRB) regarding a sidewalk variance/ and or waiver. This appeal originated at the DRB with
4 the Appellant’s application to consolidate four lots into two lots to conform his land to how
5 it developed. Because the four lots lack sidewalks affronting the City streets, the DRB
6 required that the Appellant install sidewalks before it would approve the lot consolidation.
7 Appellant appealed the DRB’s decision regarding sidewalks. The appeal made its way to
8 the EPC.

9 Briefly, the record shows that Appellant’s four lots have two houses on them.
10 Apparently for refinancing, Appellant desires to create one lot for each home [See Map at R.
11 34A]. The evidence further shows that one of the homes was constructed before 1947
12 (purchased by Appellant’s parents), and Appellant constructed the second home in 2004 [R.
13 52A]. The two homes are located at the northeast corner of Granite Ave. and 15th Street,
14 NW.

15 Apparently, when Appellant applied for the lot consolidation, he was told by City
16 Planning Staff that because there are no sidewalks on his lands affronting Granite Ave. and

17 15th Street, Appellant must install sidewalks before the City could approve the lot
18 consolidation. Appellant then applied for a variance for the width of the sidewalk and he also
19 applied for a waiver from having to install sidewalks [R. 11A]. After deferrals, in a public
20 meeting on October 30, 2019, the DRB denied the application for the variance and for the
21 waiver. However, there is no record of the DRB processes included in this appeal record.
22 Appellant filed a timely appeal to the City Council [R. 2A]. A remote Land Use Appeal
23 hearing was held on April 30, 2020.

24 The record of this appeal is lacking. This record does not include evidence of the DRB’s
25 decision making, the minutes of its public meetings, or its decision(s) on the Appellant’s
26 application. I note for the Planning Director that under the IDO, § 6-4(U)(3)(d), “the
27 Planning Director shall prepare and transmit a record of the appeal together with all appeal
28 material received...” This record that was transmitted to the City Council is inadequate and
29 incomplete.

30 In addition, in reviewing the record that is available, although the EPC held an appeal
31 hearing on Appellant’s appeal, I am unable to determine whether the EPC erred because the
32 EPC made no findings. Pursuant to IDO § 6-4(U)(3)(c)4 of the IDO, when the EPC sits as
33 an appellate body, it “shall make findings exclusively on the record.¹ As indicated above,
34 although the EPC sat as an appellate body in this matter, it failed to make any substantive
35 findings in its Official Notification of Decision [R. 3A]. The only finding that the EPC made
36 in this appeal is a conclusion that it “voted to deny the appeal” [R. 3A]. Further, when the
37 EPC performs appellate review hearings, its’ decision “*shall*” be based on whether the DRB

1. Although this section may seem to relate to only to one specific type of appeal, when reading this section and § 6-4(U)(4) together, it is applicable in this appeal.

38 (decision-making body) satisfied the three criteria of § 6-4(U)(4). (Emphasis added).
39 Without any substantive findings from the EPC other than its denial of the appeal, I find that
40 the EPC’s decision is deficient. The IDO requires that the EPC support its decision on
41 substantive findings on the record. This matter will have to be reheard by the EPC so that it
42 can do what is required under the IDO.

43 In doing so, I expressly instruct the EPC to address, among the other issues in this
44 appeal, the threshold question Appellant raised in his appeal---whether or not the DRB can
45 require sidewalks under the facts and circumstances in this matter. I view the threshold
46 question raised by Appellant as involving the question whether the lack of sidewalks on a
47 fully developed site is a “non-conforming site feature” under the IDO. Thus, the EPC must
48 also determine if the condition of the subject site (a developed site without sidewalks) is (or
49 is not) an existing non-conforming site feature under the IDO. If the EPC concludes that
50 the lack of sidewalks is a non-conforming site feature as contemplated by the IDO, the EPC
51 must also decide whether the lot consolidation is (or is not) an expansion of the
52 nonconforming site feature under the IDO.

53 
Steven M. Chavez, Esq.
Land Use Hearing Officer

May 8, 2020

Copies to:

Appellant
City Council
City Staff