



March 21st, 2025

Mr. Robert Lucero
Development Hearing Officer
Plaza Del Sol Building
600 2nd NW
Albuquerque, NM 87102

**RE: REQUEST OF A DHO SIDEWALK WAIVER FOR A NEW RESIDENTIAL DWELLING
AT 9001 MODESTO AVE NE ALBUQUERQUE NM 87122, LEGALLY DESCRIBED AS 018
017TR 1 UNIT 3 NO ALBUQ ACRES
ZONE ATLAS PAGE B-20-Z**

Dear Mr. Lucero:

Tierra West LLC is requesting a DHO – Minor Sidewalk, Curb and Gutter Waiver request for the property at 9001 Modesto Ave NE, Albuquerque, NM, 87122, legally described as 018 017TR 1 UNIT 3 NO ALBUQ ACRES, Acres: 0.8864 (the subject site). The area is of low-intensity land use to an extent that the normal installation of sidewalks will not contribute to the public welfare, and the absence of a sidewalk will not create a gap in an existing sidewalk system extended to 1 or more sides of the subject property.

Proposed Development

The proposed development is for the construction of a new single-family residential dwelling in Albuquerque's North Heights. The subject site is zoned PD, and the proposed development is following R-1D design standards, see Figure 1. The property is in an area that has a predominantly natural landscaping and rural character, see Figure 2 & 3. We are also developing a grading and drainage plan that will ensure proper drainage on the subject site and nearby property.

Figure 1: New R-1D Site Plan for 9001 Modesto

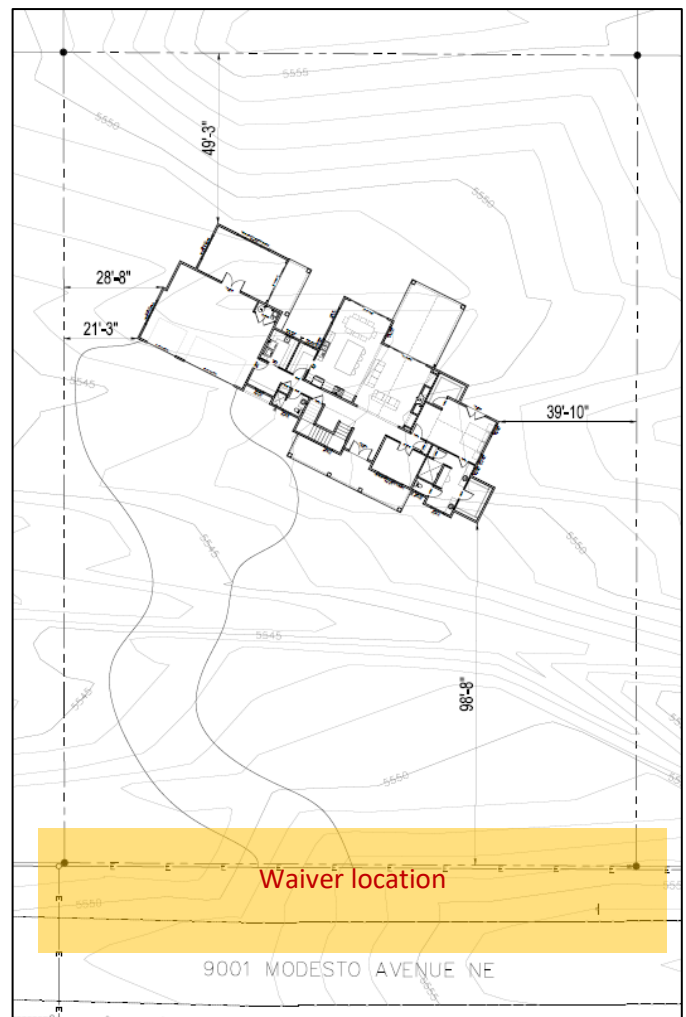
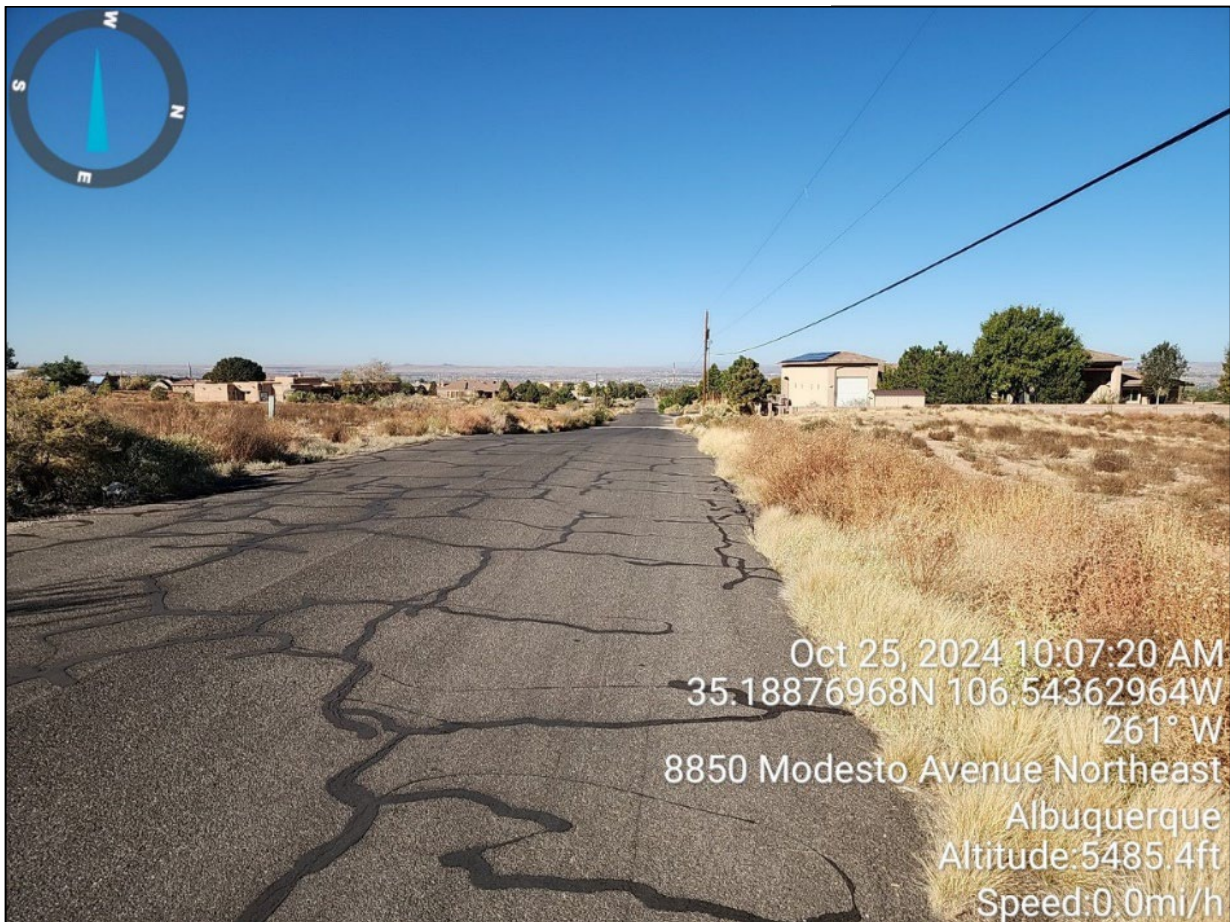


Figure 2 - Rural Roadway Conditions Around the Subject Site



Request – Sidewalk Waiver

The request is to waive the standard street section of sidewalk, curb and gutter for the roadway on 9001 Modesto Ave. The area is of low-intensity land use to an extent that the normal installation of sidewalks will not contribute to the public welfare, and the absence of a sidewalk will not create a gap in an existing sidewalk system extended to 1 or more sides of the subject property, see Figure 3.

There is support from the local Neighborhood Association – Nor Este Neighborhood Association (NENA) for the waiver as the development would be consistent with the surrounding residential dwellings and neighborhood character (letter of support attached in this submittal).

A similar residential development and waiver request was approved in the area in 2023 under project number PR-2023-008993 on Florence Ave NE between Barstow and Ventura, this site was also zoned PD and followed R-1D development standards.

Figure 3 - Lack of Sidewalk on Modesto Ave NE



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

An application for a Waiver – DHO shall be approved if it complies with all of the following criteria.

1. Any of the following criteria applies.

a. **There are pre-existing obstructions that cannot be easily or economically relocate or should not be altered, such as grades, fills, water courses, natural topographic features, man-made obstructions, or utility lines.**

There are pre-existing grades, water courses and natural topographic features that cannot be easily or economically relocated. Adding the sidewalk, curb and gutter to this property alone would alter the path runoff and drainage onto the east and west vacant properties, causing pooling and soil erosion at each end.

The existing flows from the foothills to the east have historic paths that would alter the historic flow paths to bring into compliance the requirement to construct a street and sidewalk Modifications of the historic flow paths requires the establishment of a storm drain east of the site which then modifies the downstream drainage path. That modification has not been taken into account and would require either easements or improvements to divert the flows. The proposed site layout has been designed to acknowledge these existing historical drainage pathways. Should the flow of water suddenly change, for example you can create 100 year flooding

event would overwhelm the street and properties of just a portion of the street to the west by causing potential water damage.

b. The area or site has been recognized as having historical, archeological, and/or architectural significance by the City, State, or federal government, and a Waiver is needed and appropriate to maintain such historical, archeological, and/or architectural significance.

The north Albuquerque Acres subdivision was first established in the 1920's (see exhibit xx). The design and construction of this subdivision has typically considered the existing arroyo system that runs throughout the properties. This has been addressed by different placement of the footprint of the building, and allowing the existing and natural drainage paths to continue allowing historic flows through them. Altering these flow pathways by adding curb and gutter could overwhelm the existing drainage culverts that are in the street and cause flooding and associated damage to properties.

c. The established neighborhood character or landscaping on the site would be damaged to a degree that outweighs the public interest in the City's normal technical standards in that location.

The established neighborhood and roadway character on the site would be damaged to a degree that outweighs the public interest in the City's normal technical standards in that location. As stated above, adding sidewalks, curb and gutter to this location and other locations within this subdivision would ultimately alter the natural drainage paths in place. The arroyos in place handle a substantial amount of flow during typical rain events and even more-so during 100-year event. During these types of storms, the amount of water would overwhelm the typical street drainage culverts in place, as they are not engineered to handle these types of flows.

This alters the rural nature of the area creating a changed condition from the surrounding residents and houses. By creating and causing a checkerboard development of sidewalks, streets and curbs it will create a public burden on the City of Albuquerque to construct those improvements to finish off those improvements on the missing lots.

Further, adding sidewalks to the area would require the city to finish/add sidewalks to all existing properties which have been entitled and developed without sidewalks.

We looked at Building Permits Completed within the Area Of Interest as of July 2010

1) The following have a Financial Guarantee:

- a) BP-2022-28508
- b) BP-2022-26061
- c) BP-2023-05159
- d) BP-2019-07600

2) The following do not have Financial Guarantee:

- a) BP-2017-44916
- b) BP-2023-36389
- c) BP-2020-09282
- d) BP-2019-36239

e) BP-2018-38434

f) BP-2020-05185

3) Project with Approved Variances

a) UPC: 102006512406930208 on GLENDALE AVE NE _ Sidewalk Variance/Waiver was approved in 2008 #1007566.

b) UPC: 102006504109330230 8400 FLORENCE AVE NE _DHO Waiver Granted _ PR-2023-008993

We have found there are minimum 10 completed Residential Building Applications applications in this area, while 6 of those were completed without Financial Guarantee / Infrastructure List, meaning the City would be responsible for new sidewalk to complete the piecemealed system. The allowance of the 6 residences along with the actual variance on Florence (PR-2023-008993) & Glendale (#1007566). has set a precedence waiving the requirements of those improvements.

The Neighborhood Association of the North Albuquerque Acres is in support of the sidewalk, curb and gutter waiver due to natural landscaping and character the area and Modesto Ave currently has.

d. Varying from the normal requirements and standards will encourage flexibility, economy, effective use of open space, or ingenuity in design of a subdivision, in accordance with accepted principles of site planning.

Approval of this request (sidewalk waiver) encourages ingenuity in design, flexibility, and economy. The current site plan/design of the proposed development carefully considers the existing arroyo / drainage pathway that runs through the property (which is typical of the parcels in this area). By using these natural pathways, we can allow flexibility in design and would be economically viable as compared to building new curbs and gutter along with needed drainage culverts. Further, the City may be responsible for adding curb and gutter in front of existing development where a sidewalk was not required. Given the large amount of natural flows that are handled by the existing drainage pathways, altering them would ultimately be detrimental to the entire North Albuquerque Acres area.

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

The approval of the sidewalk, curb and gutter waiver request would not be materially contrary to the safety, health, or welfare of the public. Modesto Ave is not a major thoroughfare and is low-intensity land use, the absence of a sidewalk will not create a gap in an existing sidewalk system as there is no existing sidewalk system on Modesto Ave. As mentioned above, this request is largely considering the public safety, health, and welfare of existing and future development in the area. By maintaining natural flow paths in 100-year , damage caused by flooding and overflowing culverts (which are not designed to handle this capacity of flow) would be avoided. Should the flows be altered in an inconsistent manner as they have been, the possibility for damage by flooding increases.

Not allowing the variance will actually lock in the City of Albuquerque to install storm drainage facilities and improvements through the entire area, changing the character and nature of the area forever. It will also require obtaining and securing easements for facilities that currently don't exist. Requiring piece meal improvements in roadways opens the City and the designing engineer to damage caused by changes in drainage course.

Granting the variance preserves the character of the area and also allows the City the opportunity to look at the master plan for those improvements at an appropriate time.

3. The Waiver does not cause significant material adverse impacts on surrounding properties.

The approval of the sidewalk, curb and gutter waiver request would not cause significant material adverse impacts on surrounding properties. Adding the sidewalk, curb and gutter to this property alone would alter the path runoff and drainage onto the east and west vacant properties, causing pooling and soil erosion at each end. Further, the request minimizes material adverse impacts on surrounding properties by ensuring that long standing and existing pathways for stormwater flows are maintained and not altered by curb and gutter systems.

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

The sidewalk, curb and gutter waiver would not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements. In fact the only way that roadways can physically be constructed would be to install the necessary backbone storm sewer infrastructure in all of the streets. Without that infrastructure piecemeal development would create damage to adjoining residential lots and homes.

5. The Waiver 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.

The approval of the sidewalk, curb and gutter waiver request would not significantly conflict with the goals and provisions of any City, County, or AMAFCA adopted plan or policy, this IDO, or any other City code or ordinance. In fact, the request aligns with the Comp Plan by protecting the areas natural features and character of development. As shown in exhibit A the majority of this area is developed without sidewalk. In addition, there have been approximately 6 building permit approvals in the past 15 years which did not include an Infrastructure List or Financial guarantee.

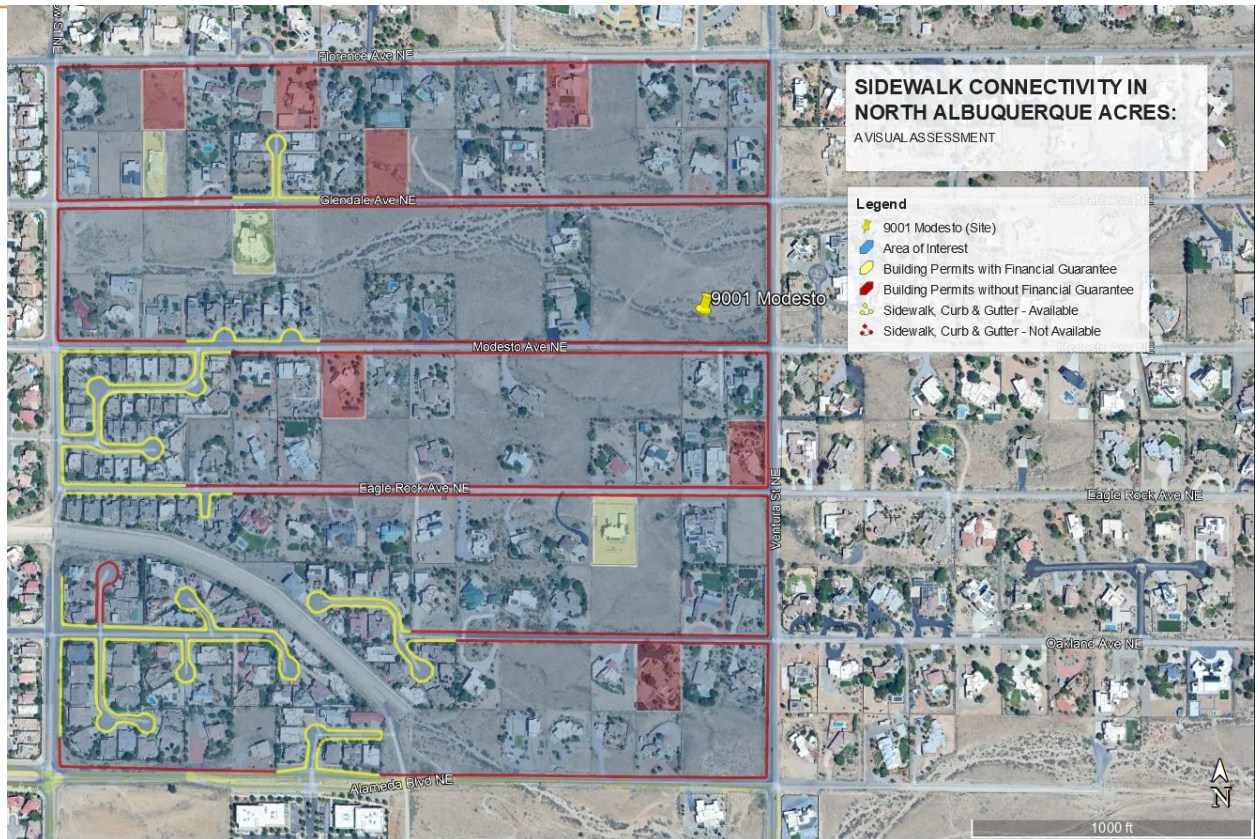


Exhibit A

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

The approval of the sidewalk, curb and gutter waiver request would not allow, encourage, or make possible undesired development in the 100-year Floodplain. The site plan and placement of the proposed development carefully consider the existing drainage pathways and will not disturb the 100-year floodplain. To state it a deferent way the City through its action has already created gaps within the area and setting the tone allowing the rural nature to continue. To only guarantee one lot at a time does not create certainty that the entire street section will be built to a normal street pattern. To build out the area a complete drainage system would need to be installed specifically on the north south side streets. Those improvements would pick up the various arroyos bisecting the lots and convey those to the east west streets. At that time the flows would then be conveyed west. That collection would be a financial burden on anyone lot owner and would actually benefit those lots already developed.

7. The Waiver will not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone.

The approval of the sidewalk, curb and gutter waiver request would not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone. The subject site is in an area of consistency, the approval of the request will ensure development is consistent with the character of the neighborhood and

is supported by the North Albuquerque Acres NA. Further, the purpose of the IDO is to protect the general welfare of the City, as such, this request aligns with that purpose. As stated above, this request is largely considering the public safety, health, and welfare of existing and future development in the area. By maintaining natural flow paths in 100-year damage caused by flooding and overflowing culverts (which are not designed to handle this capacity of flow) would be avoided. Should the flows be altered in an inconsistent manner as they have been, the possibility for damage by flooding increases.

8. The Waiver does not allow a lot or type of development that does not meet the applicable Development Standards for 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(P) (Deviations) and is granted by the DHO as part of this approval.

The approval of the sidewalk, curb and gutter waiver request does not allow a lot or type of development that does not meet the applicable Development Standards for the zone district where the lot is located. The lot is zoned PD – Planned Development and is following R-1D development standards.

9. The Waiver approved is the minimum necessary to provide redress without being inconsistent with the provisions of this Subsection 14-16-6-6(P).

The approval of the sidewalk, curb and gutter waiver request is the minimum necessary to provide redress without being inconsistent with the provisions of this Subsection 14-16-6-6(P).

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

The area is of low-intensity land use to an extent that the normal installation of sidewalk, curb and gutter will not contribute to the public welfare. The existing dwellings on Modesto Ave do not have a sidewalk, curb or gutter and the absence of a sidewalk will not create a gap in an existing sidewalk system extended to 1 or more sides of the subject property. There is support from the North Albuquerque Acres Neighborhood Association for the waiver as they enjoy the natural landscaping and character of their neighborhood.

Modesto already has developed lots on both sides of the street which by the very nature has created gaps on the street in sidewalks. There is not the ability to have a continuous sidewalk on Modesto today. This variance continues the rural pattern and precedence that has been established by the 11 lots already allowed to build.

As previously stated, this request largely considering the public safety, health, and welfare of existing and future development in the area. By maintaining natural flow paths in 100-year event, damage caused by flooding and overflowing culverts (which are not designed to handle this capacity of flow) would be avoided. Should the flows be altered in an inconsistent manner as they have been, the possibility for damage by flooding increases.

As demonstrated in the attached sidewalk exhibit, there are already several developed lots with no sidewalk. These properties were either approved for a sidewalk waiver or approved without a financial guarantee / infrastructure list. This request would not create

a gap because there is no existing sidewalk infrastructure on the surrounding parcels. In fact, most of the area is developed without sidewalk infrastructure as shown in exhibit xx.

Conclusion

On behalf of Wilke LTD Company, Tierra West respectfully requests that the Development Hearing Officer review and approve the requested DHO – Minor Sidewalk, Curb and Gutter Waiver. The proposed development is for a new single-family residential dwelling in Albuquerque's North Heights located at 9001 Modesto Ave Ne Albuquerque Nm 87122, zoned PD and following R-1D development standards. The waiver request aligns with the character of the neighborhood and shows just cause given the low-intensity land use and the absence of a sidewalk system in the area.

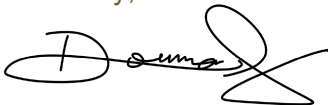
The approval of the sidewalk, curb and gutter waiver is requested due to the unique topographical and rural character of the surrounding neighborhood. The proposed waiver, along with the planned grading and drainage measures, would not be materially contrary to the safety, health, or welfare of the public. Modesto Ave is not a major thoroughfare and is low-intensity land use, the absence of a sidewalk will not create a gap in an existing sidewalk system as there is no existing sidewalk system on Modesto Ave.

Furthermore, the waiver will maintain the character of the North Albuquerque Acres in an area of consistency, has support from the local Neighborhood Association, and is consistent with the intent of the zoning regulations and is the minimum necessary to address practical difficulties.

As part of this submittal, please find the proposed scaled site plan with the waiver location called out, a letter of support from the North Albuquerque Acres Neighborhood Association and zone atlas map.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Donna Sandoval
Planner

JN:2024002
DS/jm/sl/rrb