



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

September 4, 2024

TO: Dan Lewis, President, City Council
FROM: Alan Varela, Planning Director 
Alan Varela (Sep 9, 2024 11:17 MDT)
SUBJECT: **AC-24-24**, VA-2024-00233, PR-2022-006844,
BP-2024-10295, BP 2024-15349, BP-2024-15353

Martin Vigil appeals the Site Plan-Administrative decision to approve a Site Plan for all or a portion of TRACT A THE PEARL ADDITION (being a replat of Tracts 107-B, 107-C together with Tract 106-A within projected Section 18 T10 N, R3E) zoned MX-M and R1-A, located at 1701/1623 Central Avenue, NW containing approximately 0.5767 acre(s). (J-13)

REQUEST

This is an appeal of the administrative approval of a Site Plan for a mixed-use development including 34 multi-family units and 19,926 square feet of commercial space. The Site Plan is for a project less than 50,000 square-foot and less than 5 acres and, therefore, was filed in conjunction with the building permit. The site plan portion of the site plan/building permit submittal is the item under appeal.

The application was received on April 11, 2024 and was deemed complete on June 7, 2024. The review was according to the IDO Effective Date of July 2023. The Site Plan was approved with the Building Permit on July 18, 2024.

The appellant made a timely appeal of the application by filing by August 5, 2024.

An appeal of a site plan decision must show the following:

IDO 14-16-6-4(V)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes.

6-4(V)(4)(a) The decision-making body or the prior appeal body acted

fraudulently, arbitrarily, or capriciously.

6-4(V)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(V)(4)(c) 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).

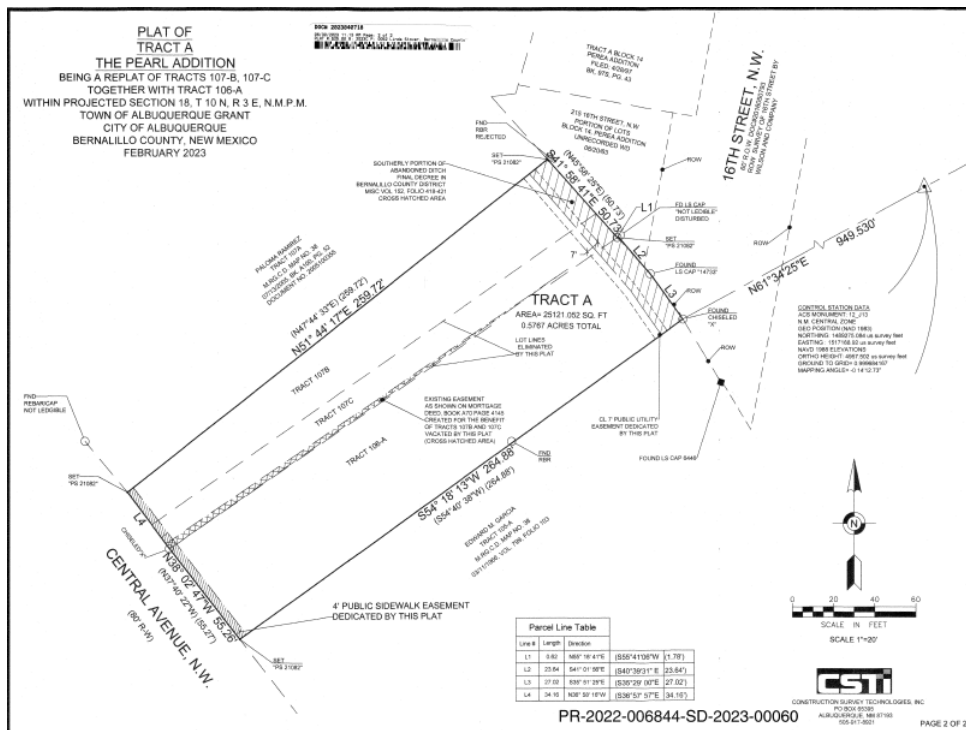
BACKGROUND

A. Previous Approvals

Preliminary/Final Plat. On March 22, 2023, the Development Hearing Officer (DHO) reviewed and approved a request for a replat of the subject property (PR 2022-006844). The plat consolidated three lots (Tracts 107-B, 107-C, and 107-A) into one parcel and vacated a private easement. The R1-A zoning over the abandoned MRCGD acequia was existing on the three parcels and was retained on the replat.

Staff had previously reviewed the proposed plat and proposed development for multifamily and commercial at a sketch plat on April 20, 2022. Staff comments are in the 'Additional Information' section of the Record.

Figure 1. Preliminary Plat approved by the DHO, March 22, 2023. The full Plat is in the Record under 'Additional Information.'



An Infrastructure List for the widening of the Central Avenue sidewalk was reviewed with the plat and received final approved on March 31, 2023.

B. Site Plan-Administrative Approval Under Appeal:

The application for a Site Plan for projects less than 50,000 square feet and under 5 acres are reviewed administratively by Planning Department staff, including transportation, hydrology, and code enforcement. This occurs concurrently with the Building Safety review of the building permit. The site plan and building plan submittal combine to become a building permit approval. The full application was received April 11, 2024. The Site Plan-Administrative portion was reviewed subject to the following criteria from the IDO:

IDO 14-16-6-5(G)(3) Review and Decision Criteria

An application for Site Plan – Administrative shall be approved if it meets all of the following criteria.

6-5(G)(3)(a) The Site Plan complies with all applicable standards in this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

6-5(G)(3)(b) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development or the applicant has agreed to install required infrastructure and public improvements pursuant to Subsection Sub-section 14-16-1-7(B)(2) and 14-16-5-4(N) and/or a signed an Infrastructure Improvements Agreement (IIA) pursuant to Subsection 14-16-5-4(O) to add adequate capacity.

REASONS FOR THE APPEAL

This memo summarizes the appeal statements made by the appellant. Please refer to the filed appeal for the complete text of the appellants statements.

1. **Appellant:** The decision-making process was behind closed doors. The staff did not allow the public to participate in the planning process. None of the affected neighbors were provided notice that the ZEO would decide the 16th Street issue/other issues.

Staff Response: The Site Plan-Administrative process approved by the City Council in the IDO is 'administrative' and the review does not occur in a public meeting. It allows an applicant to receive approval if they meet all the IDO requirements for the application. The process does not require neighborhood involvement, but neighbors can submit comments or contact staff or the applicant. The staff reviewed the public comments that were received and made several email responses. All emails are included in the Record.

The ZEO interprets the IDO on a regular basis for applicants, staff, and the public. These

interpretations are not made in a public meeting. The applicant asked that the ZEO make an official interpretation of the IDO for this case. The ZEO prepared his interpretation by analyzing the language of the IDO without the participation of the applicant or any other stakeholder. The written interpretation is public information and is part of the Record for the case that is available to all stakeholders.

Public notice for the application was compliant with the IDO. Electronic notification was made as per IDO Subsection 14-16-6-4(K)(2). The application did not meet the threshold for a pre-submittal facilitated meeting. No neighborhood requested the post-submittal facilitated meeting allowed by the IDO.

2. **Appellant:** The ZEO interpretation is erroneous, arbitrary and capricious. It is in direct conflict with previous Planning interpretations. This regulation was used to deny my property “emergency use” access on 16th St since 2011. My primary vehicular access is on Central Ave. I have secondary access on the rear portion of my property through a rolling fence that I keep locked. Access was provided to Jay Rembe from 16th Street for his project while denying the appellant legal access to his property. The ZEO knowingly and intentionally ignored the first sentence “primary vehicular access shall be from Central Ave.”

Staff Response: The ZEO Interpretation focused on the question: does the IDO provision 14-16-3-4(D)(5)(a)2. Parking Access prohibit parking access to residential development along Central Avenue from 15th Street, 16th Street, and Fruit Avenue. The ZEO did not interpret the meaning of ‘primary vehicular access shall be from Central Avenue.’

On August 18, 2022, the Zoning Enforcement Officer issued an official interpretation on the applicability and extent of IDO 14-16-3-4(D)(5)(a)2. Parking Access. The applicant Rembe Urban Design and Development had requested an official interpretation to determine if this section of the IDO prohibits parking access to residential development along Central Avenue from 15th Street, 16th Street, and Fruit Avenue. The ZEO stated:

The language of IDO Subsection 14-16-3-4(D)(5)(a)2.b. is explicit and unambiguous in prohibiting access to non-residential development along Central Avenue from 15th Street, 16th Street, and Fruit Avenue. Nowhere in the provision is an explicit or unambiguous reference, nor is the construction of language in the provision meant to extend the prohibition of access to residential development. Therefore, I interpret this provision as explicitly prohibiting access to non-residential development along Central from 15th Street, 16th Street, and Fruit Avenue. This prohibition does not extend to residential projects accessing 15th street, 16th Street and Fruit Ave.

In conclusion, the proposed parking area located to the rear (north end) of the subject site with access for a residential use on 16th Street complies with the provisions of IDO 14-16-3-4(D)(5)(a)2.b. To address the concerns of existing adjacent neighbors regarding potential changes to 16th Street as a result of this proposed development, the parking area shall be limited only to residential tenants

of the proposed development and should be gated to discourage access by others. It is also strongly recommended that all potential impacts to 16th Street resulting from the proposed development be mitigated without creating major changes to the street's existing character, parking scheme, and usage. (*See "Interpretation-14-16-3-4" in the Record under 'Additional Information'.*)

Staff incorporated the ZEO interpretation into its review and approved the multi-family portion of the project to take parking access from 16th Street. The 34 units have 28 parking spaces.

Staff reviewing the site plan administratively worked with the applicant on the primary access of the **commercial** portion of the property. The primary vehicular access to the commercial is from Central, including the dedicated ADA parking space immediately in front of the building, 3 car spaces and a motorcycle space on a lot across Central. The commercial parking is under a shared parking agreement recorded with the County Clerk. These types of arrangements were part of the site plan review and meet IDO regulations regarding shared parking and are in keeping with the Premium Transit and Main Street designations of this section of Central Avenue.

The appellant asserts that his property was treated differently in 2011. Planning staff explains that any actions alleged were done by a separate City Department and the IDO was not in place in 2011. Staff is required to apply the IDO in effect at the time the application is deemed complete, i.e., IDO effective July 2023 for this application. Adjoining properties can currently submit site plans based on the zoning and IDO regulations applicable to their lot for the IDO effective August 2024.

3. **Appellant:** Staff refused over a dozen requests for a Traffic Impact Study based on 100 peak hours trips generated. Jay Rembe's residential project of 34 units has sole ingress and egress from 16th St. from an exceptionally narrow street. Jay Rembe's consolidated lots have two existing driveways on Central with no access from 16th Street.

Staff Response: The Site Plan - Administrative review allowed for primary access to the *commercial* portion of the project through a shared parking agreement to allow most of the required parking to be directly across Central Avenue. The residential portion of the project was allowed to use 16th Street to access the *residential* parking area.

The traffic generated from the development falls well below the 100 trips during either the AM or PM peak hour threshold where Transportation Engineers can require a Traffic Impact Study (Development Process Manual (DPM) 7-5(C)). Based on the latest ITE Trip Generation Manual, the total trips for both residential and commercial uses will generate approximately 22 trips in the AM peak hour and 34 trips in the PM peak hour. The office portion of the building would generate approximately 5 trips in the AM peak hour and 7 trips in the PM peak hour. The commercial users are parking offsite and accessing the building from Central Avenue and will not add trips on 16th Street.

4. **Appellant:** Staff ignored request for Traffic Study and Impact Analysis. The appellant

asserts:

- a. Traffic studies are warranted when there will be a drastic change to pre-existing neighborhood.
- b. Traffic studies are warranted when safety is an issue.
- c. AFR stated the 16th street is too narrow for traffic flow and staff refused to discuss this subject.
- d. This would be classified as a substandard design as 16th Street does not meet the 20 for the unobstructed feet clearance.

Staff Response: The City of Albuquerque has published the warranting criteria for requiring a Traffic Impact Study in the Development Process Manual in Section 7-5(C) Table 7.5.87. Not only does the development not generate the required 100 trips during the peak hour, it is also within 660 feet of a Premium Transit Station and along a Main Street Corridor, which would exempt it from a study even if it did generate the required trips.

16th Street measures approximately 27 feet from face-of-curb to face-of-curb. 16th Street is classified as an Access Local. Its current width of 27 feet is within the current design standard of 26-28 ft face-of-curb to face-of-curb for an Access Local.

5. **Appellant:** The Institute of Traffic Engineers has additional warrants for a traffic study. Bernalillo County also has other warrants for a traffic study.

Staff Response: ITE lists possible warranting items for traffic studies and they are only listed for guidance as states, counties, and municipalities are able to develop their own standards based on their individual development patterns and traffic challenges.

The City of Albuquerque has its own warranting criteria that differ from Bernalillo County. The County faces different conditions and challenges to traffic than the City faces as most of County roads are rural. County rules reflect the nature of their roadway network. The City has developed its standards based on its roadway network and challenges.

6. **Appellant:** Building height is limited to 30 feet in height in the Premium Transit Corridor. The proposed development is 48 feet high within 50 feet of existing single-family. The 4-story structure will be the tallest building on the block and does not conform to the pre-existing neighborhood or CPO-3.

Staff Response: The appellant is referring to IDO Section 14-16-5-9, a provision for Neighborhood Edge buffers. Protected lots must be zoned R-A, R-1, R-MC, or R-T and must contain low-density residential development. The proposed multi-family building is on the MX-M portion of the site making it a regulated lot. Central Avenue is both a Main Street and Premium Transit corridor, so the building could not be taller than 30 feet within 50 feet of a protected lot line. The proposed building is 48 feet tall, but the building is farther than 50 feet to any property zoned R-A, R-1, R-MC, or R-T. (See the map below.) The blue line shows a measurement 50 feet from the north property line; the black 'x' shows the general location of the 48-foot tall building. It is also noted that

the residential homes to the east and west are on parcels zoned MX-M and are not protected lots. Therefore, the 48-foot tall building is located on the lot where it is compliant with the IDO.

Figure 2. The building location shown to be more than 50 feet from R1-A zoned lots.

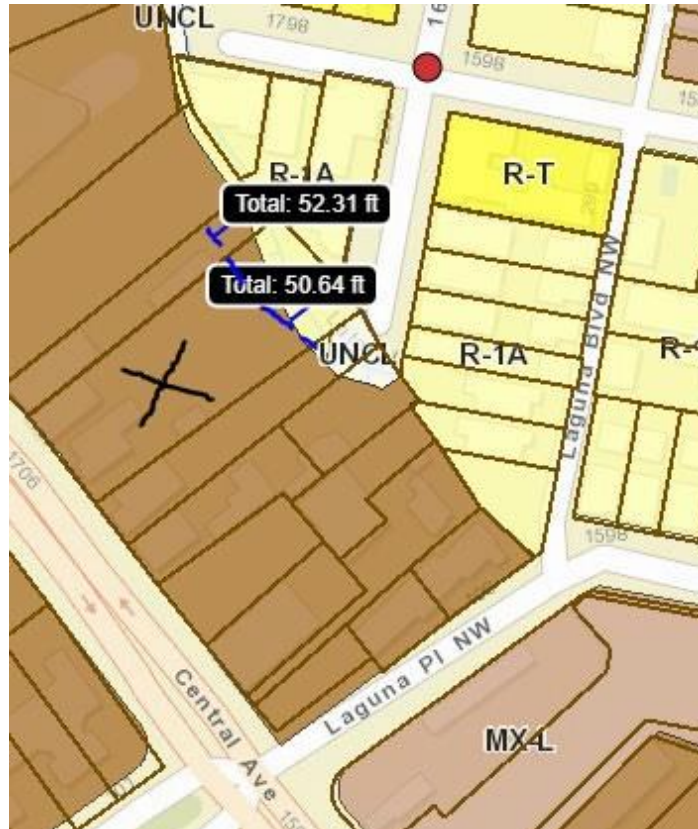
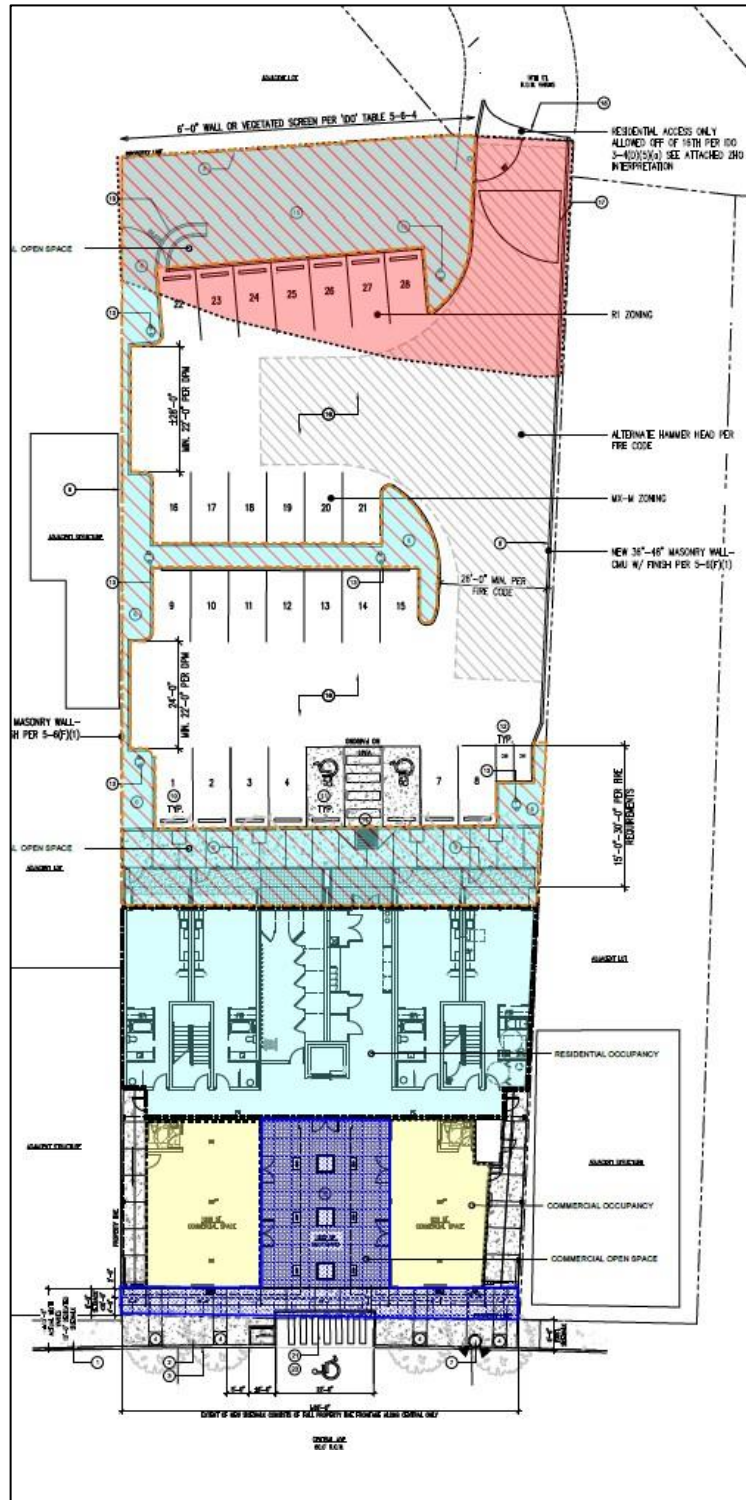


Figure 3. The site layout. The building is shown in light blue, yellow, and some of the purple. Central Avenue is at the bottom of the figure and the connection to 16th Street is shown at the top.



7. **Appellant:** A 0-foot setback on the west and east sides are not allowed in the IDO, page 111.

Staff Response: The page cited does not apply as it references the CPO-12 - Sawmill/Wells Park Overlay zone and does not apply to CPO-3 the Downtown Neighborhood Area. Per IDO 14-16-3-4(D)(3)(c)(2)(a), CPO -3 allows 0-feet interior side setbacks on both the east and west property lines. The proposed building is compliant with IDO setbacks.

8. **Appellant:** Flooding on Central 14-5-1-7 (B)(1,2) also 14-5-1-8 (C)(1,2,3) – Dangerous flooding occurs on Central Ave during moderate to heavy rains. The proposed development will only have gutter drainage onto Central Ave. This is dangerous and a violation of promoting public health, safety, and general welfare of the public. For issues with CABQ Hydrology/Storm Water Management refuses to respond to flooding issues cause by the development across Central ponding on their property. (photos included)

Staff Response: Hydrology reviewed the grading and drainage plan for the proposed development and approved it. Under the existing conditions, the runoff is detained on site and 0.10 cubic feet per second drains to 16th Street. No runoff is discharged to Central Avenue.

CONCLUSION

The Planning staff reviewed the site plan-administrative application and found that it met the requirements of the IDO and the DPM. The building height, setbacks, and design is compliant with CPO-3. The commercial access from Central is required per IDO Subsection 14-16-3-4. The Developer provided this commercial access through a recorded Off-Site Parking Agreement. Only the residential parking will take access from 16th Street. The trip generation did not warrant a Traffic Impact Study. The Hydrology Division reviewed the grading and drainage plan and found it to be compliant with the DPM standards for stormwater management. The decision was supported by substantial evidence and was not arbitrary or capricious. The Planning staff did not err in applying the IDO and DPM to the site plan.

AC-24-24_Planning_Memo_Vigil_Final

Final Audit Report

2024-09-09

Created:	2024-09-09
By:	Lucinda Montoya (lucindamontoya@cabq.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAdcBK8BAEKleys69ExTC5LG0NhQMN2sJK

"AC-24-24_Planning_Memo_Vigil_Final" History

-  Document created by Lucinda Montoya (lucindamontoya@cabq.gov)
2024-09-09 - 4:26:11 PM GMT
-  Document emailed to Alan Varela (avarela@cabq.gov) for signature
2024-09-09 - 4:26:15 PM GMT
-  Email viewed by Alan Varela (avarela@cabq.gov)
2024-09-09 - 5:17:07 PM GMT
-  Document e-signed by Alan Varela (avarela@cabq.gov)
Signature Date: 2024-09-09 - 5:17:15 PM GMT - Time Source: server
-  Agreement completed.
2024-09-09 - 5:17:15 PM GMT