



Los Alamos County
Community Development Department

**PLANNING & ZONING COMMISSION
STAFF REPORT**

Public Hearing Date: July 22, 2026
Subject: Variance; Case No. VAR-2026-0019
Applicants/Owners: McCloy Land Surveying, LLC (Scott McCloy), Agent
Case Manager: Danyelle Valdez, Planning Manager

Professional Background:

Bachelor's degree in business administration; 12 years' experience in Real Estate Development, Project Management, Planning and Land Use.

Case No. VAR-2026-0019 Scott McCloy, applicant, on behalf of RUSS NM LLC, property owner, requests approval of a variance from the Type B Buffer Zone planting requirements of the Neighborhood Protection Standards (Chapter 16, Section 16-43, Los Alamos County Development Code). The request is associated with Case No. SIT-2026-0081, an application for adoption of a site plan that proposes the parking and operation of nine (9) mobile food vending vehicles at 1377 and 1399 Diamond Drive, Los Alamos, NM. The properties are within the General Commercial (GC) zone district.

EXECUTIVE SUMMARY

McCloy Land Surveying, LLC, on behalf of property owner Russ NM LLC, requests approval of a Variance from the Type B Buffer Zone planting requirements established in Section 16-43, Neighborhood Protection Standards, of the Los Alamos County Development Code. The Variance applies to the western boundary of the properties located at 1377 and 1399 Diamond Drive, where the General Commercial (GC)-zoned site abuts Residential Mixed (RM)-zoned properties.

The Variance is associated with Site Plan Adoption application SIT-2026-0081, which proposes redevelopment of two adjoining vacant parcels as a commercial parking area serving Los Alamos High School and a mobile food vending court. The combined site contains approximately 73,921 square feet (± 1.70 acres).

The interface between the GC-zoned site and the adjoining RM-zoned properties requires a Type B Buffer. The applicant asserts that the existing topography, including a natural berm and mature vegetation along portions of the western property boundary, provides adequate separation and screening from the adjacent residential properties. The applicant therefore requests relief from the additional planting requirements applicable to the Type B Buffer.

The request is limited to the planting requirements of the Type B Buffer. The associated Site Plan Adoption application and its compliance with the applicable site-development, access, utility, parking, fire-safety, and operational standards are evaluated separately under Case No. SIT-2026-0081. This report evaluates the Variance request under the decision criteria established in Section 16-74(g)(3) of the Development Code.

Cross Section B-B

Scale: Horizontal 1"=20' / Vertical 1"=4'
Vertical Exaggeration = 5X

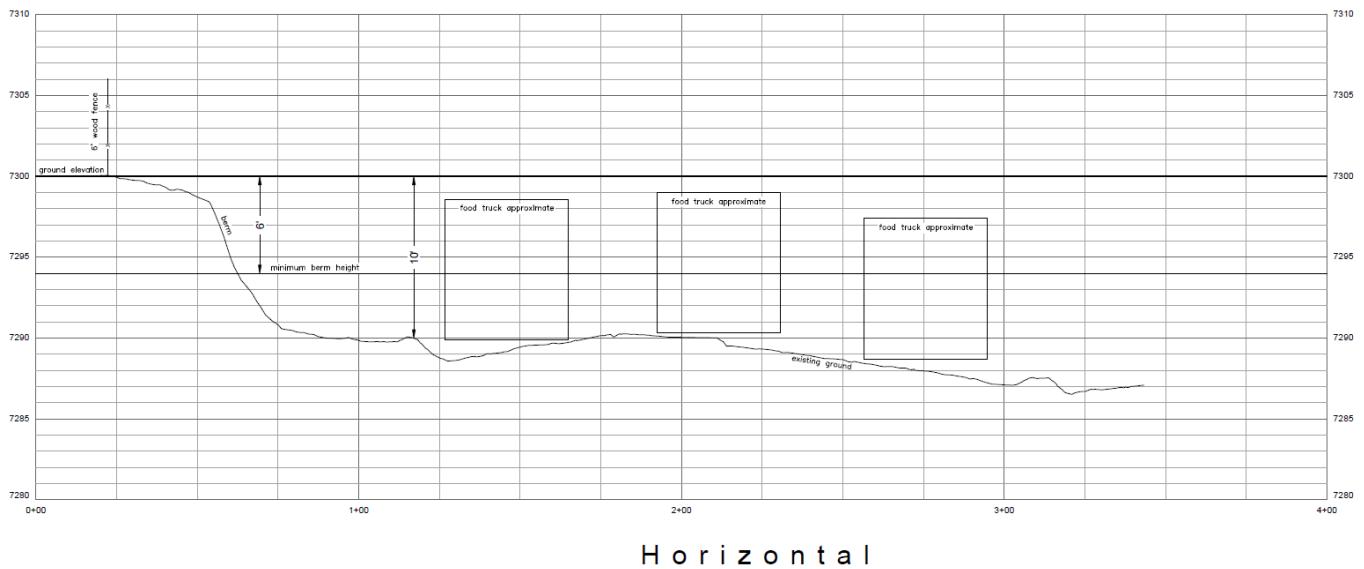


Figure 1: Cross Section B-B

SITE INFORMATION

The subject property consists of two adjoining parcels located along the west side of Diamond Drive within the Western Area of the Los Alamos Townsite:

- Tract I, Western Area No. 1, located at 1399 Diamond Drive; and
- Lot 1 of Tract H, Western Area No. 1, located at 1377 Diamond Drive.

The parcels have a combined area of approximately 73,921 square feet (± 1.70 acres), are zoned General Commercial (GC), and are not located within an overlay zone. The site was previously developed with a commercial retail building and automotive repair garage but is currently vacant.

Properties adjoining the site to the west, identified as Lots 342 through 348 of Western Area No. 1, are zoned Residential Mixed (RM). Because the GC-zoned subject property directly abuts the RM-zoned properties, the Neighborhood Protection Standards require a Type B Buffer along the shared western boundary.

PROJECT INFORMATION

A pre-application meeting was held on February 11, 2026. Staff determined that the proposed redevelopment requires approval of a Site Plan Adoption and that relief from the Type B Buffer planting requirements requires a variance. The associated Site Plan application, SIT-2026-0081, proposes an off-street parking area serving Los Alamos High School on the northern parcel at 1399 Diamond Drive and a mobile food vending court on the southern parcel at 1377 Diamond Drive. The vending court includes nine designated mobile food vending spaces, communal seating beneath an open-air shade structure, and associated customer parking. The applicant also identifies existing mature vegetation within portions of the required buffer area.

The site plan application identifies an existing grade change and natural berm along portions of the western property boundary. Cross-sections A–A and B–B on Sheet 2 of the site plan depict the existing topography between the proposed commercial uses and the adjoining residential properties.

Based on these existing conditions, the applicant requests relief from the additional planting requirements of the Type B Buffer. Approval of the Variance would not eliminate other applicable development standards or authorize the proposed uses independently of the associated Site Plan Adoption. All remaining applicable requirements would continue to apply.



Figure 2: Distance from Residential Area

INTERDEPARTMENTAL REVIEW COMMITTEE (IDRC) REVIEW

An Interdepartmental Review Committee (IDRC) review was conducted from June 18 through June 25, 2026, with the formal IDRC meeting held on June 25, 2026. Participating departments included Public Works/Engineering, Environmental Services, the Department of Public Utilities, the Fire Marshal's Office, the Building Division, and the Planning Division.

No technical comments or conditions were provided by the reviewing departments specific to the Variance request. The requested relief is limited to the Type B Buffer Zone planting

requirements and does not affect the applicable standards, facilities, services, or operational responsibilities of the participating departments.

IDRC recommended that the application proceed to the Planning and Zoning Commission for consideration.

PUBLIC NOTICE

The Los Alamos County Code of Ordinances, Chapter 16 – Development Code, Section 16-71, Table 49 Procedures Summary Table and Section 16-72(c) Notifications, establish the notice requirements for a public hearing:

- Published notice in a newspaper of general circulation within the County at least 14 calendar days before the hearing [16-72(c)(4)]. **Published July 2, 2026.**
- Posted notice of at least one sign on a street abutting the subject property, visible from the street, at least 14 calendar days before the hearing [16-72(c)(4)]. **Posted July 2, 2026.**
- Mailed notice at least 14 days before the hearing to all owners of record or occupants of properties within 300 feet of the exterior lot lines of the subject property, excluding public rights-of-way [16-72(c)(5)c.]. **Mailed July 2, 2026.**

VARIANCE DECISION CRITERIA

Section 16-74(g)(3) of the Los Alamos County Development Code states that an application for a Variance shall be approved if it meets all the following criteria:

a. The variance will not be contrary to the public safety, health, or welfare.

Applicant Response:

The variance is limited in scope to the requirements for planting new vegetation associated with the Type B Buffer Zone requirements under Sec. 16-43, Neighborhood Protection Standards. The requested variance does not affect public safety, health, or welfare.

Staff Response:

Staff finds that this criterion has been met. The requested relief is limited to the planting component of the required Type B Buffer Zone. No permanent structures, grading, or other site improvements are proposed as part of the variance request. The proposed mobile food vending use will remain subject to all applicable County requirements related to fire safety, sanitation, traffic circulation, waste disposal, and temporary use operations.

b. The variance will not undermine the intent of this Code, the applicable zone district, other County adopted policies or plans, or violate the Building Code.

Applicant Response:

The requested variance will not undermine the intent of the Development Code or applicable zoning district. The purpose of the Type B Buffer requirements is to provide separation

between commercial and residential uses. Existing site conditions already substantially achieve that intent through horizontal separation, elevation difference, and existing fencing.

Staff Response:

Staff finds that this criterion has not been met. The purpose of the Neighborhood Protection Standards is to provide an appropriate transition and separation between non-residential uses and nearby residential properties. The required Type B Buffer includes both physical separation and landscape components intended to provide screening, soften the visual effect of commercial development, and protect neighborhood character.

While the existing separation distance, grade change, and fencing provide some degree of visual buffering, they do not eliminate the purpose or function of the required planting standards. Approval of a variance removing the planting requirement would create a site-specific exception to an adopted neighborhood protection standard without sufficient evidence that the required landscaping is unnecessary to achieve the intent of the Code.

c. Granting of the variance will not cause an intrusion into any utility or other easement unless approved by the owner of the easement.

Applicant Response:

The proposed variance does not involve construction, grading, or intrusion into any utility or other easements.

Staff Response:

Staff finds that this criterion has been met. The variance request is limited to relief from planting requirements and does not authorize construction, grading, or placement of improvements within a utility or other easement.

d. The variance request is caused by unusual physical characteristic or a hardship inherent in the lot or lot improvements and the peculiarity or hardship has not been self-imposed.

Applicant Response:

The physical characteristics of the site already satisfy the functional intent of a Type B Buffer Zone due to the substantial existing separation distance and elevation change between the proposed use area and adjacent residential properties.

Staff Response:

Staff finds that this criterion has not been met. The applicant has identified existing separation distance, topographic variation, and fencing between the proposed mobile food vending area and nearby residential properties. However, these conditions do not establish a physical hardship that prevents compliance with the planting requirements of the Type B Buffer Zone.

The application does not identify a specific site condition, such as insufficient planting area, utility conflicts, drainage limitations, unstable slopes, soil constraints, access limitations, or other physical impediment that would make the required landscaping infeasible. Rather, the

request is based on the applicant's position that additional plantings are not needed and would impose disproportionate cost.

Cost, convenience, or a preference not to install required landscaping does not constitute an unusual physical characteristic or hardship inherent to the property. The request is therefore not justified by a hardship that is unique to the lot and not self-imposed.

e. The variance will not create any significant adverse impacts on properties within the vicinity.

Applicant Response:

The variance maintains the longstanding physical characteristics of the property and will not create significant adverse impacts on nearby properties because the proposed use area is separated from adjacent residential properties by distance, topography, and existing fencing.

Staff Response:

Staff finds that this criterion has not been met. The applicant has demonstrated that some physical separation exists between the proposed use area and nearby residential properties. However, the requested variance would eliminate the required planting component of the Type B Buffer Zone, which is intended to provide additional visual screening and compatibility between commercial and residential uses.

The application does not include a landscape alternative, screening analysis, or other evidence demonstrating that the complete removal of required plantings will not result in adverse visual or neighborhood compatibility impacts. Existing distance and topographic separation alone do not establish that the required landscape buffer is unnecessary.

f. Granting of the approved variance is the minimum necessary easing of the Code requirements making possible the reasonable use of the land, structure, or building.

Applicant Response:

Granting the requested variance will allow reasonable use of the property for mobile food vending while preserving the intent of the Neighborhood Protection Standards. Strict application of the planting requirements would impose disproportionate costs relative to the limited scope and intensity of the proposed use.

Staff Response:

Staff finds that this criterion has not been met. The request seeks relief from the required Type B Buffer Zone planting requirements rather than a limited modification tailored to a demonstrated physical constraint. The applicant has not shown that compliance with the required landscaping would prevent reasonable use of the property for mobile food vending or other permitted commercial uses.

The record does not demonstrate that less extensive alternatives have been evaluated, such as reduced or strategically located plantings, drought-tolerant landscaping, preservation of existing vegetation, phased installation, or another site-specific landscape design that would

meet the intent of the Code while reducing the burden of compliance. Because the application has not demonstrated that the requested relief is the minimum necessary to allow reasonable use of the property, this criterion has not been met.

DRAFT MOTIONS

Recommended Motion, Deny:

I move to **deny** Case No. VAR-2026-0019, a request by RUSS NM LLC, property owner, with Scott McCloy as applicant/agent, for a variance from Section 16-43, Neighborhood Protection Standards, of the Los Alamos County Development Code. The request seeks relief from the Type B Buffer Zone planting requirements associated with the proposed mobile food vending use at 1377 and 1399 Diamond Drive, Los Alamos, New Mexico.

Denial is based on the Findings of Fact established at the hearing and the determination that the Applicant has not met all required decision criteria for a Variance under Section 16-74(g)(3) of the Los Alamos County Development Code, specifically criteria subsections (b), (d), (e), and (f). The Commission acts under the authority of Section 16-69(b)(2) and (6) of the Development Code.

I further move to authorize the Chair to sign the Findings of Fact and Conclusions of Law for this case reflecting the decision of the Commission. This document will be prepared by County staff based on this decision.

Alternative Motion 1, Approve with Conditions:

I move to **conditionally approve** Case No. VAR-2026-0019, a request by Russ NM LLC, property owner, with Scott McCloy as applicant/agent, for a Variance from Section 16-43, Neighborhood Protection Standards, of the Los Alamos County Development Code. The request seeks relief from the Type B Buffer Zone planting requirements associated with the proposed mobile food vending court at 1377 and 1399 Diamond Drive, Los Alamos, New Mexico.

Approval is based on the Findings of Fact established at the hearing and the determination that the Applicant has met all required decision criteria for a Variance under Section 16-74(g)(3) of the Los Alamos County Development Code, subject to the following conditions:

- 1.

The Commission acts under the authority granted in Section 16-69(b)(2) and (6) of the Development Code.

I further move to authorize the Chair to sign the Findings of Fact and Conclusions of Law for this case reflecting the decision of the Commission. This document will be prepared by County staff based on this decision.

Alternative Motion 2, Approve:

I move to **approve** Case No. VAR-2026-0019, a request by Russ NM LLC, property owner, with Scott McCloy as applicant/agent, for a Variance from Section 16-43, Neighborhood Protection Standards, of the Los Alamos County Development Code. The request seeks relief from the Type B Buffer Zone planting requirements associated with the proposed mobile food vending court at 1377 and 1399 Diamond Drive, Los Alamos, New Mexico.

Approval is based on the Findings of Fact established at the hearing and the determination that the Applicant has met all required decision criteria for a Variance under Section 16-74(g)(3) of the Los Alamos County Development Code. The Commission acts under the authority granted in Section 16-69(b)(2) and (6) of the Development Code.

I further move to authorize the Chair to sign the Findings of Fact and Conclusions of Law for this case reflecting the decision of the Commission. This document will be prepared by County staff based on this decision.

REFERENCE

Los Alamos County, Chapter 16, Development Code: <https://lacnm.com/MunicipalCode>