

# TABLE OF CONTENTS

## AC-26-03

VA-2025-00154 (ZHE – Variance), VA-2026-00007 (Appeal)

PAGE(S)

1) MEMO .....	1 - 3
2) NOTICE OF DECISION, DECEMBER 31, 2025 .....	4 - 6
3) APPEAL APPLICATION/REASON FOR APPEAL .....	7 - 52
4) MATERIAL SUBMITTED TO ZHE..... APPLICATION STAFF REPORT	53 - 100
5) ZHE MINUTES, DECEMBER 16, 2025 .....	101 - 106
6) ADDITIONAL INFORMATION..... NOTICE OF APPEAL, JANUARY 22, 2026 ACTION SHEET	107 - 110



# City of Albuquerque

## Planning Department

Timothy M. Keller, Mayor

### Interoffice Memorandum

February 11, 2026

**To:** Klarissa J. Peña, President, City Council

**From:** Alan Varela, Director, Planning Department

<sup>DS</sup>  
*AMV*

**Subject:** AC-26-03, VA-2025-00154: Matthew Cunningham (“Applicant”) appeals the Zoning Hearing Examiner’s decision to DENY a variance to install a 5-foot 10-inch perimeter steel fence in the front yard of the property located at 2513 4th Street NW, zoned MX-M and NR-C

#### OVERVIEW

On December 16, 2025, property owner Matthew Cunningham (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a Variance of 2 feet and 10 inches to install a 5-foot 10-inch perimeter steel fence in the front yard of the property located at 2513 4th Street NW.

The ZHE denied the Applicant’s requests in a written decision dated December 31, 2025.

The Appellant timely filed an appeal of the ZHE’s decisions prior to the appeal deadline of January 15, 2026. As the property owner and applicant for the original applications that were denied, the appellant has standing to appeal the decision.

#### BASIS FOR APPEAL

Pursuant to Integrated Development Ordinance (IDO) §14-16-6-4(U)(4), the applicable criteria for the appeal shall be whether the ZHE made 1 of the following mistakes:

1. The ZHE acted fraudulently, arbitrarily, or capriciously.
2. The decision being appealed is not supported by substantial evidence.
3. The ZHE erred in applying the requirements of the IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

## STAFF RESPONSE

The Appellant argues that the ZHE Findings 12, 13, 17, 18 are in error and that the ZHE acted arbitrarily in denying this variance when other tall walls exist on nearby properties.

The reasons for the appeal, excerpted from the Appellant's letter, are listed below in quotation marks, accompanied by italicized responses from ZHE staff.

### "A. Contested Findings of Fact

- (ii) Finding of Fact No. 12 is contested in part. Finding of Fact No. 12 states that the Subject Property is located in the MX-M zone district. According to the enclosed IDO Zone Look-Up Map (attached Appeal Exhibit D), the Subject Property is only partially located in an MX-M zone. Other portions of the Subject Property are located in an NR-C zone. Accordingly, it is not clear whether the characteristics and/or restrictions of zone MX-M or NR-C, or both, control Applicant/Appellant's variance request."

*Although not stated in the staff report, the subject site includes lots with two different zone districts:*

- *MX-M (Mixed-use – Medium Intensity)*
- *NR-C (Non-residential – Commercial)*

*The maximum height of a wall/fence is 3 feet in the front yard for both zone districts. The requested variance to height is for the portion of the site within the MX-M zone district.*

"(iii) Finding of Fact. No. 13 is contested insofar as the findings stated are not factual, but are instead a recitation of the IDO at Part 14-16-6-6(O)(3)(a), which is a legal conclusion."

*Finding #13 restates the decision criteria for a Variance – ZHE and does not appear to be a legal conclusion.*

"(v) Finding of Fact. No. 17 is contested... [because] the ZHE denied Applicant/Appellant's request for variance based ... on the erroneous finding that there were no special circumstances applicable to the Subject Property....According to the ZHE in Finding of Fact No. 17, the higher fence requested by the variance 'sought to increase security of the Subject Property, because trespassers including unhoused persons and drug users have come onto the Subject Property repeatedly.'

The ZHE concluded that such security concerns are so prevalent in the surrounding area that the need for security-based variances is not unique to the Subject Property."

*The first decision criterion [IDO § 14-16-6-6(O)(3)(a)1] is that there are special circumstances that apply to the subject property. ZHE Finding #17 determined that the security concerns are not special circumstances that apply to the subject property.*

"(vi) Finding of Fact. No. 18 is contested on two grounds. First, the findings stated are not factual, but legal.

Second, the legal conclusion(s) stated in Finding of Fact No. 18 are erroneous.”

*The Appellant argues that Finding #18 is erroneous because the IDO review and decision criterion that “a variance shall be approved if ALL [emphasis added] of the following criteria are met” [IDO § 14-16-6-6(O)(3)(a) leaves open the possibility that a variance MAY be approved even if only some of the criteria are met. Review and decision criteria for multiple applications in the IDO use this construction. ZHE Finding #18 construes the common sense understanding of the wording used throughout IDO Part 6, which has been the consistent interpretation of this language since the IDO was adopted.*

“C. Constitutional Considerations

Constitutional considerations over equal protection are also implicated by the denial of Applicant/Appellant’s requested variance. ... The prevalence of fences on other properties in the area surrounding the Subject Property demonstrates:

- (1) there cannot be any plausible basis to deny approval of the requested variance for a similar fence; and
- (2) the denial of the variance here demonstrates an unequal, arbitrary, capricious and/or discriminatory application of the IDO against Applicant/Appellant as compared to other similarly situated property owners.”

*How other fences nearby got approved is not part of the decision criteria for the requested variance. The decision criteria for this request is pursuant to IDO § 14-16-6-6(O)(3), which the ZHE found the applicant did not satisfy because no special circumstances apply to the lot [Finding #17]. It is the burden of the applicant in each application to present evidence that satisfies their application’s decision criteria. The approval of one application in an area does not guarantee that other applications from the same area will be approved if their applicants fail to present sufficient evidence to satisfy their application’s decision criteria. Moreover, as the criteria considered here concern the special circumstances of the applicant’s property as opposed to conditions applicable to the area as a whole, any approvals received on other nearby properties cannot be used to satisfy this application’s decision criteria.*

*Properties in MX-M may have a 5-foot wall if set back at least 10 feet from the lot line if all the requirements of IDO § 14-16-5-7(D)(3)(c) are met.*

*Properties in NR-C may have a 6-foot wall if set back 5 feet from the property line and view fencing is used for portions of the wall above 3 feet [IDO § 14-16-5-7(D)(3)(d).*

/ Adam Sena /

Adam Sena, Senior Planner  
City of Albuquerque Planning Department

/ Leslie Najj /

Leslie Najj, Principal Planner  
City of Albuquerque Planning Department



CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

Matthew Cunningham requests a Variance to install a 5-foot 10-inch perimeter steel fence for Map 36, Tracts 36B1A & 36B2, Lots 3 thru 6, Block 2 Towner Addition & East 7 feet Vacation Alley Adjacent and Lots 7 & 8 Block 2 Towner Addition and West 7 Feet, located at 2513 4th Street NW, zoned MX-M, NR-C (H-14) (IDO Section 14-16-6-6(O))

Special Exception No: .... **VA-2025-00154**  
Project No: ..... **N/A**  
Hearing Date: ..... 12-16-25  
Closing of Public Record: 12-16-25  
Date of Decision: ..... 12-31-25

On December 16, 2025, Matthew Cunningham (“**Applicant**”) was scheduled to appear before the Zoning Hearing Examiner (the “**ZHE**”) requesting a Variance to install a 5-foot 10-inch perimeter steel fence. (“**Application**”) upon the real property located at 2513 4th Street NW (the “**Subject Property**”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a Variance to install a 5-foot 10-inch perimeter steel fence, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“**IDO**”) Section 14-16-6-6(O).
2. Applicant has authority to pursue this Application, pursuant to 14-16-6-4(D).
3. Applicant duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. Applicant is not required to offer a meeting to Indian Nations, Tribes, and Pueblos before filing the application, pursuant to IDO Section 14-16-6-4(B).
5. The Planning Director’s delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
6. The analyses and studies listed in IDO Section 14-16-6-4(H) are not required.
7. The Application was forwarded to commenting agencies pursuant to IDO Section 14-16-6-4(I).
8. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).
9. Applicant has sent an electronic mail notice to the email addresses on file with the Office of Neighborhood Coordination for each pertinent Neighborhood Association as required by IDO Section 14-16-6-4(J)(2).
10. Applicant has sent mailed notice to all property owners within 100 feet of the subject property as required by IDO Section 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).

12. The Subject Property is located in the MX-M zone district. The property owner is requesting a Variance to install a 5-foot 10-inch perimeter steel fence. Therefore, approval of the proposed fence requires a variance approval pursuant to IDO Subsection 14-16-6-6(O).
13. IDO Section 14-16-6-6(O)(3)(a) (Review and Decision Criteria– Variance) reads: “*An application for a Variance - ZHE shall be approved if it meets all of the following criteria[:]*”
  1. *There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties result from strict compliance with the minimum standards.*
  2. *The Variance will not be materially contrary to the public safety, health, or welfare.*
  3. *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*
  4. *The Variance will not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone.*
  5. *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*
14. Applicant has provided a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
15. Applicant has shown compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
16. Applicant Appeared at the December 16, 2025, ZHE hearing on the Application and gave evidence in support of the Application.
17. Based on evidence in the record, it does not appear that their special circumstances applicable to the Subject Property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-6-6(O)(3)(a)(1). Applicant testified that the higher fence is sought to increase security of the Subject Property, because trespassers including unhoused persons and drug users have come onto the Subject Property repeatedly. While the ZHE empathizes with this difficult situation, it appears from the record that these problems are not unique to the subject property, but instead are suffered generally by the entire vicinity. The IDO requires that there be special circumstances applicable to the Subject Property itself that make it different than surrounding properties. Because substantial evidence does not exist to establish that the Subject Property has any special circumstances, the Application must be denied.
18. Because the IDO requires that all prongs of the variance test be satisfied, and the Application fails to satisfy the requirement that special circumstances exist, the ZHE need not examine the other prongs of the variance test.

DECISION:

DENIAL of the Application.

APPEAL:

If you wish to appeal this decision, you must do so by January 15, 2026 pursuant to Section 14-16-6-4-(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This Notice of Decision does not constitute approval of plans for a building permit. If your application is approved, bring this Notice of Decision with you when you apply for any related building permit or occupation tax number. Approval of a Conditional Use is void after two (2) years from date of approval if the rights and privileges granted thereby have not been executed or utilized. Approval of a Variance is void after one (1) year from date of approval if the rights and privileges granted thereby have not been executed or utilized.



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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc: Matthew Cunningham, [rbogue@gmail.com](mailto:rbogue@gmail.com)  
ZHE File  
Zoning Enforcement



**January 15, 2026**  
*Delivered in Person*

***APPEAL TO CITY COUNCIL  
THROUGH THE LAND USE HEARING OFFICER (LUHO)***

Planning Director  
City of Albuquerque Planning Dept.  
600 2nd Street NW  
Albuquerque, New Mexico 87102

Re: **Appeal of Special Exception No./Project No. VA-2025-00154**

To all whom this may concern,

This is an Appeal from the Decision of the Zoning Hearing Examiner (“ZHE”) in Special Exception No./Project No. VA-2025-00154 (“Appeal”).

A variance is sought to install a 5-foot, 10-inch perimeter steel fence to real property with the following legal description:

Map 36, Tracts 36B1A & 36B2, Lots 3 through 6, Block 2  
Towner Addition & East 7 feet Vacation Alley Adjacent and  
Lots 7 & 8 Block 2 Tower Addition and West 7 feet  
 (“Subject Property”).

The street address of the Subject Property is 2513 4<sup>th</sup> Street NW, Albuquerque, New Mexico 87102.

The original application concerning this Appeal was submitted to the ZHE on or about September 24, 2025. A hearing on the application was conducted on December 16, 2025. The ZHE’s decision was provided on December 31, 2025 (“Decision”).

The Decision denied the variance. The ZHE found that there were no special circumstances applicable to the Subject Property that make the Subject Property different than surrounding properties. This was the sole basis for the ZHE’s denial.

This Appeal is filed for and on behalf of Applicant/Appellant, Matthew Cunningham (“Applicant/Appellant”), who has an ownership interest in the Subject Property. In support of this Appeal, Applicant/Appellant explains as follows:

## **I. TIMELINESS**

The Date of Decision denying this request for variance is December 31, 2025. Pursuant to the Integrated Development Ordinance (“IDO”) in effect as of April 21, 2025, Part 14-16-6-4(U)(3)(a), the deadline to file this Appeal is January 16, 2026, which is fifteen (15) days after the Date of the Decision, excluding the New Year’s holiday.

## **II. STANDING**

Applicant/Appellant has standing because he has an ownership interest in the Subject Property. *See* Part 14-16-6-4(U)(2)(a)(1) (standing to appeal a final decision may be granted to [an] owner of the property listed in the application).

Here, the Subject Property is owned by a New Mexico limited liability company known as MOS Enterprises, LLC (“Company Owner”). *See* attached Appeal Exhibit A. The Company Owner is a single-member limited liability company whose member is Michell Cunningham. *See* Appeal Exhibit B. Ms. Cunningham is the spouse of Applicant/Appellant. *See* Appeal Exhibit C. Applicant/Appellant therefore has a community property interest in the Company Owner.

Alternatively, Applicant/Appellant has standing to bring this appeal pursuant to Part 14-16-6-4(U)(2)(a)(4) on the basis that he qualifies as “any other person . . . that [sic] can demonstrate that his/her/its property rights or other legal rights have been specially and adversely affected by the decision . . .”.

As a second alternative, should the appellate decision-making body find that Applicant/Appellant lacks standing, then, in that case, the Applicant/Appellant also lacked standing to submit the original application. *See* Part 16-14-6-4(D)(1)(a)-(e). In that event, the appellate decision-making body should find that the original application is void for non-compliance with the IDO, and allow the Company Owner and/or its member to begin the variance process anew by submitting a new application.

## **III. PROCEDURAL GROUNDS FOR APPEAL**

The procedural grounds for this appeal include, but are not necessarily limited to, an arbitrary and/or incorrect interpretation and/or application of the IDO at Part 14-16-6-6(O)(3)(a), which was the only part of the IDO considered by the ZHE. The denial of the request for variance also constitutes a violation of Applicant/Appellant’s rights under the United States and New Mexico Constitutions.

## **IV. STANDARD OF REVIEW**

As contemplated by the IDO at Part 14-16-4-4(U)(4)(a), the criteria for this review may include whether: (1) the decision-making body acted fraudulently, arbitrarily or capriciously; (2) the decision being appealed is not supported by substantial evidence; or (3) the decision-making body erred in applying the requirements of the IDO.

## V. ENCLOSURES

### CD:

Enclosed with this appeal is a single PDF file and separate PDF files of the complete application submitted to the ZHE (both formats are included for convenience). Due to the size of the electronic file, these enclosures, together with this appeal, are provided on a compact disc (“CD”). The enclosures provided on CD are as follows:

1. Form A – Appeal Coversheet (bates VA-2025-00154 000001);
2. Original Application (bates VA-2025-00154 000002-000003);
3. Application Cover Email (bates VA-2025-00154 000004);
4. Office of Neighborhood Coordination (ONC) Email (bates VA-2025-00154 000005);
5. Posting Agreement (bates VA-2025-00154 000006);
6. 2<sup>nd</sup> Markup (bates VA-2025-00154 000007);
7. Zone Atlas (bates VA-2025-00154 000008);
8. Plat Map (bates VA-2025-00154 000009);
9. Fence Drawing (bates VA-2025-00154 000010);
10. Email Notice (bates VA-2025-00154 000011-000014);
11. Photo of Notification Envelopes (bates VA-2025-00154 000015);
12. Overhead Site Photo (bates VA-2025-00154 000016);
13. Public Notification Form (bates VA-2025-00154 000017-000021);
14. Fence Layout Drawing (bates VA-2025-00154 000022);
15. Fence Drawing on Plat Map (bates VA-2025-00154 000023);
16. Notice of Decision (bates VA-2025-00154 000024-000026); and
17. Letter of Authorization (bates VA-2025-00154 000027).

### This Appeal:

Also enclosed on CD are the following documents, which are submitted in support of this appeal:

18. This Appeal;
19. Appeal Exhibit A – Closing Statement showing MOS Enterprises, LLC as the “buyer”;
20. Appeal Exhibit B - MOS Enterprises, LLC’s Operating Agreement;
21. Appeal Exhibit C – Affidavit of Matthew Cunningham;
22. Appeal Exhibit D - IDO Zone Look-Up Map;
23. Appeal Exhibit E – USDA Grant of Inspection;
24. Appeal Exhibit F – Highlighted copy of 9 CFR, § 917;
25. Appeal Exhibit G - Food Safety and Inspection Service (FSIS) Guidelines for Food Processors; and
26. Appeal Exhibit H – Photographs of Similar Fences in the Surrounding Area.

## VI. ARGUMENT ON APPEAL

The Decision of the ZHE was arbitrary, capricious, discriminatory, not supported by substantial evidence, and is the result of err in applying the requirements of the IDO. The basis for this Appeal is explained as follows:

### A. Contested Findings of Fact:

Applicant/Appellant responds to the ZHE's Findings of Fact as provided in the Decision as follows:

- (i) Findings of Fact Nos. 1 through 11 are not contested.
- (ii) Finding of Fact No. 12 is contested in part. Finding of Fact No. 12 states that the Subject Property is located in the MX-M zone district. According to the enclosed IDO Zone Look-Up Map (attached Appeal Exhibit D), the Subject Property is only partially located in an MX-M zone. Other portions of the Subject Property are located in an NR-C zone. Accordingly, it is not clear whether the characteristics and/or restrictions of zone MX-M or NR-C, or both, control Applicant/Appellant's variance request. The rest and remainder of the findings in Finding of Fact No. 12 are not contested.
- (iii) Finding of Fact. No. 13 is contested insofar as the findings stated are not factual, but are instead a recitation of the IDO at Part 14-16-6-6(O)(3)(a), which is a legal conclusion. Applicant/Appellant addresses the language and applicability of Part 14-16-6-6(O)(3)(a) as part of this Appeal in the Sections below.
- (iv) Findings of Fact Nos. 14 through 16 are not contested.
- (v) Finding of Fact. No. 17 is contested as further provided throughout this Appeal.
- (vi) Finding of Fact. No. 18 is contested on two grounds.

First, the findings stated are not factual, but legal.

Second, the legal conclusion(s) stated in Finding of Fact No. 18 are erroneous. The IDO is, at best, unclear over whether all of the criterion listed in Part 14-16-6-6(O)(3)(a) must be satisfied in all cases.

The express language of Part 14-16-6-6(O)(3)(a) contemplates that variances "shall be approved" if the criterion are met, as opposed to "shall be denied" unless the criterion are met.

The difference between "shall be approved" and "shall be denied" is an important distinction.

On the one hand, if requests for variance “shall be denied” unless all criterion are met, then each criterion must be satisfied. However, as drafted, the ordinance instead contemplates that variance requests “shall be approved” if the criterion are met – and is thus silent on whether variance requests “may be approved” even if all criteria are not met.

Under the rules of statutory construction, the more specific and express language in Part 14-16-6-6(O)(3)(a) should apply, as opposed to other areas of the IDO, which may create ambiguity over the need to meet all or only some of the criterion listed in Part 14-16-6-6(O)(3)(a). *See State v. Farish*, 2021-NMSC-030, ¶22 (explaining the general/specific rule of statutory construction).

Applying the general vs. specific rule here, it is Applicant/Appellee’s position that even if all criterion under Part 14-16-6-6(O)(3)(a) are *not* met, a request for variance may still be approved. This interpretation is not only consistent with the express language of Part 14-16-6-6(O)(3)(a), but also affords a more straightforward, common sense, and practical means of approving or denying requests for variance.

Notwithstanding, as provided below, all of the criterion under Part 14-16-6-6(O)(3)(a) have been fully satisfied in this case.

B. Analysis of Part 14-16-6-6(O)(3)(a):

Here, the ZHE denied Applicant/Appellant’s request for variance based solely and exclusively on the erroneous finding that there were no special circumstances applicable to the Subject Property making the Subject Property different than surrounding properties.

In making this determination, the ZHE rigidly applied certain aspects of the first criterion for variance requests under Part 14-16-6-6(O)(3)(a), while ignoring other aspects which clearly support – and require – that Applicant/Appellant’s variance request be approved.

Part 14-16-6-6(O)(3)(a) reads in its entirety:

An application for a Variance – ZHE shall be approved if it meets all of the following criteria.

1. There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical

difficulties result from strict compliance with the minimum standards.

2. The Variance will not be materially contrary to the public safety, health, or welfare.
3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
4. The Variance will not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone.
5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

According to the ZHE in Finding of Fact No. 17, the higher fence<sup>1</sup> requested by the variance “sought to increase security of the Subject Property, because trespassers including unhoused persons and drug users have come onto the Subject Property repeatedly.” The ZHE concluded that such security concerns are so prevalent in the surrounding area that the need for security-based variances is not unique to the Subject Property.

Concluding that property owners must be denied a security-based variance merely because crime in the surrounding area is pervasive – and therefore all property owners are affected – is an absurd result. Of course, such a finding is not what is intended or required by the IDO.

Contrary to the ZHE’s conclusion, the correct interpretation of the first criterion under Part 14-16-6-6(O)(3)(a) shows that security-based variances “shall be approved” where circumstances give rise to “. . .extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties result from strict compliance with the minimum standards.” Applying the first criterion under Part 14-16-6-6(O)(3)(a) in its entirety requires approval – not a denial – of Applicant/Appellant’s variance request.

In fact, a reasonable interpretation of the IDO does not require adherence to Part 14-16-6-6(O)(3)(a) at all. Under Part 14-16-5-7(D)(3)(3), which is specifically applicable to walls and fences, the IDO contemplates that the Zoning Enforcement Officer (“ZEO”) may allow heightened fences for no other reason than because they may be necessary “due to security reasons . . .” No other criteria need be considered according to this section of the IDO.

Notwithstanding, contrary to Finding of Fact No. 17, security concerns are always unique based on each property owner’s particularized need for security – especially in areas heavily impacted

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<sup>1</sup> There is no dispute that a perimeter fence with a height of 3-feet would not require a variance. *See* IDO Table 5-7-1.

by crime. For example, when a specific property is started on fire, one cannot reasonably conclude that that particular fire is a general condition of the surrounding area.

To further illustrate why crime prevention and deterrence is a special circumstance uniquely applicable to the Subject Property here, consider that the Subject Property is being renovated to accommodate a beef jerky business, Enchantment Snack Brands, LLC d/b/a Vigil's Beef Jerky, which is regulated by the United States Department of Agriculture ("USDA"). *See* USDA Grant of Inspection, attached as Appeal Exhibit E.

USDA regulations, including at 9 CFR, § 417.1 require that food manufacturers submit a plan to control critical access points "at which control can be applied and, as a result, a food safety hazard can be prevented, eliminated, or reduced to acceptable levels" and to implement preventative measures, including "[p]hysical . . . means that can be used to control an identified food safety hazard." Under 9 CFR, § 917.2(3), "[f]ood safety hazards might be expected to arise from . . . (iii) Chemical contaminations [such as fire] . . . (v) Drug residues . . . [and] (x) Physical hazards." A highlighted copy of 9 CFR, § 917 is attached as Appeal Exhibit F.

To facilitate compliance with USDA regulations, the Food Safety and Inspection Service (FSIS) promulgates Guidelines for Food Processors – a highlighted copy of which is attached as Appeal Exhibit G. As part of these Guidelines, FSIS recommends that food manufacturers implement "Outside Security" including:

- Plant boundaries to prevent unauthorized entry and posting "No Trespassing" signs;
- Monitoring the integrity of the plant perimeter for signs of suspicious activity "or unauthorized entry;"
- Secured access points into the establishment;
- Inspections of incoming and outgoing vehicles (both private and commercial); and
- Limiting access to parking lots to vehicles of authorized visitors, guests and employees.

In Finding of Fact No. 17, the ZHE empathized with Applicant/Appellant's variance request on the basis that a higher fence is necessary due to security concerns caused by "trespassers" and "drug users" who have come onto the Subject Property "repeatedly." These security concerns are directly implicated by USDA regulations and FSIS Guidelines, and clearly give rise to a particularized need for a security fence around the perimeter of the Subject Property. The applicability of such regulations and Guidelines demonstrate how the security concerns at issue here constitute "special circumstances" uniquely applicable to the Subject Property as contemplated by the first criterion under Part 14-16-6-6(O)(3)(a).

Briefly considering the other criterion listed under Part 14-16-6-6(O)(3)(a):

2. The Variance will not be materially contrary to the public safety, health, or welfare.
  - A security fence is likely required for public safety, health and welfare – especially for a food-based business.

3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
  - Several other properties in this area have their own perimeter fences – which is addressed in more detail under the “Constitutional Considerations” Section below. For purposes of this criterion, fencing the Subject Property would not cause a significant material adverse impact – it would instead allow the Subject Property to better fit into the area.
4. The Variance will not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone.
  - The fence would in fact materially support the intent and purpose of the IDO, which expressly contemplates that variances “shall be approved” to avoid “extraordinary hardship,” limitations on “reasonable use” or “economic return,” or “practical difficulties result[ing] from strict compliance with the minimum standards.”

And

5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.
  - A steel fence of 5-feet, 10-inches is the minimum height reasonably necessary to deter trespassers and drug users from repeatedly coming onto the Subject Property.

For the foregoing reasons, the appellate decision-making body should approve Applicant/Appellant’s variance.

### C. Constitutional Considerations

Constitutional considerations over equal protection are also implicated by the denial of Applicant/Appellant’s requested variance. These issues are addressed as follows:

Both the United States and New Mexico Constitutions encompass “equal protection” principles. U.S. Const., 14th Amend., Sec. 1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws”); *and* N.M. Const., Art. II, Sec. 18 (“No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal

protection of the laws”). In addition, New Mexico courts interpret the prohibitions and protections under the New Mexico Constitution more expansively than the federal Constitution. *See, e.g., State v. Gomez*, 1997-NMSC-006, ¶ 24. Thus, the New Mexico equal protection clause affords more protection than its federal counterpart. There is no doubt under modern jurisprudence that local governments, including municipalities, are bound by equal protection principles. *See generally, Romero v. Evans*, 517 U.S. 620 (1996).

The prevalence of fences on other properties in the area surrounding the Subject Property demonstrates: (1) there cannot be any plausible basis to deny approval of the requested variance for a similar fence; and (2) the denial of the variance here demonstrates an unequal, arbitrary, capricious and/or discriminatory application of the IDO against Applicant/Appellant as compared to other similarly situated property owners.

Here, it is Applicant/Appellant’s position that both his federal and New Mexico equal protection rights have been violated and that such violations cannot survive under any level of scrutiny. *See Rodriguez v. Brand West Dairy*, 2016-NMSC-029, ¶ 23 (“There are three levels of equal protection review based on the New Mexico Constitution: rational basis, intermediate scrutiny and strict scrutiny. . . . In analyzing which level of scrutiny should apply in an equal protection challenge, a court should look at all three levels to determine which is most appropriate based on the facts of the particular case. . . . What level of scrutiny we use depends on the nature and importance of the individual interests asserted and the classifications created by the statute.”) (Internal citations omitted). The rational basis standard applied to New Mexico Constitutional protections generally requires the challenger to “demonstrate that the classification created by the [ordnance] is not supported by a firm legal rationale or evidence in the record.” *Id.* (citing *Wagner*, 2005-NMSC-016, ¶ 24). “In practical terms, our rational basis standard requires the challenger to bring forward record evidence, legislative facts, judicially noticeable materials, case law, or legal argument to prove that the differential treatment of similarly situated classes is arbitrary, and thus not rationally related to the articulated legitimate government purposes.” *Rodriguez*, ¶ 28.

In the first instance, the equal protection clauses of both Constitutions have been violated here because there is no basis, rational or otherwise, to set a completely unnecessary and arbitrary height restriction on fencing. *See* Table 5-7-1 of the IDO, generally limiting walls and fences in MX-M zones to 3 feet.

Secondly, the ZHE’s refusal to approve Applicant/Appellant’s request for variance – which would allow a 5-foot, 10-inch fence, is clearly a discriminatory and arbitrary decision given the number of other properties in the surrounding area with fences of the type being sought by Applicant/Appellant. Attached as Appeal Exhibit H are several photographs of properties located on Menaul Blvd. in Albuquerque between 2nd and 4th Streets. These photographs confirm that there is no rational basis to deny Applicant/Appellant a variance for a similar type fence.

An even more glaring example of disparate and discriminatory treatment against Applicant/Appellant is a fence erected around the Gordon Bernell Charter School, located at 2901 4th Street NW, Albuquerque, NM 87102, which was just recently installed. This property is a mere stone’s throw from the Subject Property. As shown by the photograph below, the fence at 2901 4th Street is nearly exactly the same type of fence as requested by Applicant/Appellant.

Fence at 2901 4th Street:



There is simply no rational reason, or any reason, why the properties along Menaul shown in Appeal Exhibit H, and the property at 2901 4th Street, have all been allowed higher metal fences, but Applicant/Appellant's request was denied. Such is a clear violation of Applicant/Appellant's rights under the equal protection clauses of the United States and New Mexico Constitutions.

## **VII. CONCLUSION**

For the reasons herein, the appellate decision-making body should reverse the Decision of the ZHE and approve the variance requested by Applicant/Appellant. Alternatively, the appellate decision-making body should remand this matter to the appropriate decision-making body with an order and instruction to approve the variance as sought.

Respectfully submitted by:

Jackson Law, LLC



Wesley C Jackson, Esq.

4001 Indian School Rd. NE

Suite 105

Albuquerque, NM 87110

Tel: (505) 881-7676

Email: [Wes@LegalActionNM.com](mailto:Wes@LegalActionNM.com)

*As Authorized Representative of Applicant/Appellant*

**Certificate of Service**

I hereby certify that the foregoing was served in person on the City of Albuquerque Planning Director this 15<sup>th</sup> day of January, 2026.

Jackson Law, LLC



Wesley C Jackson, Esq.

4001 Indian School Rd. NE

Suite 105

Albuquerque, NM 87110

Tel: (505) 881-7676

Email: [Wes@LegalActionNM.com](mailto:Wes@LegalActionNM.com)

*As Authorized Representative of Applicant/Appellant*



**Fidelity National Title**  
Insurance Company

1/22/2020  
Attn: Escrow Set-up  
Security Escrow  
1721 Girard Blvd NE  
Albuquerque, NM 87106

File Number: SP000072895VV  
Buyer: MOS Enterprises, LLC  
Seller: Arnell Revocable Trust  
Property Address: 2513 & 2515 4<sup>th</sup> St NW  
Albuquerque, NM 87102

We enclosed the following documents for the purpose of setting up a new escrow:

- \*Recorded copy of REC
- \*Original signed SWD & WD
- \*signed close statement and check for \$23,503.12 made payable to Security Escrow to be applied to acct# 60000106177604 toward principal only

Matthew Cunningham for MOS: [thecigman@prodigy.net](mailto:thecigman@prodigy.net)  
Rose Arnell for the trust: [rarnell307@q.com](mailto:rarnell307@q.com)

If you have any questions, please contact me immediately at the number shown below.

A handwritten signature in black ink, appearing to read "Veronica Villa".

Veronica Villa  
Escrow Officer

8500 Menaul Blvd NE Ste B-150, Albuquerque, NM 87112 PH: 505-332-6203 FX: 505-559-5178

**EXHIBIT A**  
**WARRANTY DEED**

**ROSAURA ARNELL, Trustee of the ARNELL REVOCABLE TRUST**, for consideration paid, grants to **MOS Enterprises, LLC, a New Mexico Limited Liability Company**, whose address is **8308 Ruidoso Road N.E., Albuquerque, New Mexico 87109**, the following described real estate in **Bernalillo** County, New Mexico:

**SEE EXHIBIT "A", ATTACHED FOR LEGAL DESCRIPTION.**

Subject to reservations, restrictions and easements of record, and to property taxes for the current year and all subsequent years.

With warranty covenants.

WITNESS my hand and seal this 21 day of January, 2020.

**THE ARNELL REVOCABLE TRUST**

  
By: **ROSAURA ARNELL, Trustee**

**ACKNOWLEDGMENTS**

STATE OF NEW MEXICO            )  
  )ss.  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on January 21, 2020, by ROSAURA ARNELL, Trustee of THE ARNELL REVOCABLE TRUST.

My Commission Expires: \_\_\_\_\_

  
\_\_\_\_\_  
Notary Public



OFFICIAL SEAL  
VERONICA VILLA  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 2/9/20



**APPEAL EXHIBIT B**

**OPERATING AGREEMENT  
of  
MOS Enterprises LLC**

**This Operating Agreement** (the "Agreement") made and entered into this 15<sup>th</sup> day of Jan, 2010 (the "Execution Date"),

**BY:**

Michelle Cunningham of 8308 Ruidoso RD NE, Albuquerque, NM 87109

(the "Member").

**BACKGROUND:**

- A. The Member wishes to be the sole member of a limited liability company.
- B. The terms and conditions of this Agreement will govern the Member within the limited liability company.

**IN CONSIDERATION OF** and as a condition of the Member entering into this Agreement and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Member agrees as follows:

**Formation**

- 1. By this Agreement, the Member forms a Limited Liability Company (the "Company") in accordance with the laws of the State of New Mexico. The rights and obligations of the Member will be as stated in the New Mexico Limited Liability Company Act (the "Act") except as otherwise provided in this agreement.

**Name**

- 2. The name of the Company will be MOS Enterprises LLC.

**Sole Member**

- 3. While the Company consists only of one Member, any reference in this Agreement to two or more Members and that requires the majority consent or unanimous consent of Members, or that requires a certain percentage vote of Members, should be interpreted as only requiring the consent or vote of the sole Member.

**Purpose**

- 4. \_\_\_\_\_

**Term**

- 5. The Company will continue until terminated as provided in this Agreement or may dissolve under conditions provided in the Act.

**Place of Business**

- 6. The Principal Office of the Company will be located at 8308 Ruidoso RD NE, Albuquerque, NM 87109 or such other place as the Member may from time to time designate.

**Capital Contributions**

- 7. The following table shows the Initial Contributions of the Member. The Member agrees to make the Initial Contributions to the Company in full, according to the following terms:

Member	Contribution Description	Value of Contribution
Michelle Cunningham		\$ _____

**Allocation of Profits/Losses**

- 8. Subject to the other provisions of this Agreement, the Net Profits or Losses, for accounting purposes, will accrue to and be borne by the sole Member:

Michelle Cunningham of 8308 Ruidoso RD NE, Albuquerque, NM 87109.

9. Where the Company consists of two or more Members, no Member will have priority over any other Member for the distribution of Net Profits or Losses.

**Nature of Interest**

10. A Member's Interest in the Company will be considered personal property.

**Withdrawal of Contribution**

11. Where the Company consists of two or more Members, no Member will withdraw any portion of their Capital Contribution without the unanimous consent of the other Members.

**Liability for Contribution**

12. A Member's obligation to make their required Capital Contribution can only be compromised or released with the consent of all remaining Members or as otherwise provided in this Agreement. If a Member does not make the Capital Contribution when it is due, he is obligated at the option of any remaining Members to contribute cash equal to the agreed value of the Capital Contribution. This option is in addition to and not in lieu of any others rights, including the right to specific performance that the Company may have against the Member.

**Additional Contributions**

13. Capital Contributions may be amended from time to time, according to the business needs of the Company. However, if additional capital is determined to be required and an individual Member is unwilling or unable to meet the additional contribution requirement within a reasonable period, and where the Company consists of two or more Members, the remaining Members may contribute in proportion to their existing Capital Contributions to resolve the amount in default. In such case, the allocation of Net Profits or Losses and the distribution of assets on dissociation or dissolution will be adjusted accordingly.
14. Any advance of money to the Company by any Member in excess of the amounts provided for in this Agreement or subsequently agreed to, will be deemed a debt due from the Company rather than an increase in the Capital Contribution of the Member. This liability will be repaid with interest at such rates and times to be determined by a majority of the Members. This liability will not entitle the lending Member to any increased share of the Company's profits nor to a greater voting power. Repayment of such debts will have priority over any other payments to Members.

**Capital Accounts**

15. An individual capital account (the "Capital Account") will be maintained for each Member and their Initial Contributions will be credited to this account. Any Additional Contributions made by any Member will be credited to that Member's individual Capital Account.

**Interest on Capital**

16. No borrowing charge or loan interest will be due or payable to any Member on their agreed Capital Contribution inclusive of any agreed Additional Contributions.

**Management**

17. Management of this Company is vested in the Member.

**Authority to Bind Company**

18. Only the following individuals have authority to bind the Company in contract: Michelle Cunningham.

**Duty of Loyalty**

19. Any Member may invest in or engage in any business of any type, including without limitation, a business that is similar to the business of the Company whether or not in direct competition with the Company and whether or not within the established or contemplated market regions of the Company. Neither the Company nor any Member will have any right to that opportunity or any income derived from that opportunity.

**Duty to Devote Time**

20. Each Member will devote such time and attention to the business of the Company as the majority of the Members will from time to time reasonably determine for the conduct of the Company's business.

**Member Meetings**

21. Where the Company consists of two or more Members, a meeting may be called by any Member providing that reasonable notice has been given to the other Members.
22. Regular meetings of the Members will be held only as required.

**Voting**

23. Each Member will be entitled to cast votes on any matter based upon the proportion of that Member's Capital Contributions in the Company.

**Admission of New Members**

24. No new Members may be admitted into the Company.

**Voluntary Withdrawal of a Member**

25. A Member may not withdraw from the Company without the unanimous consent of the remaining Members. Any such unauthorized withdrawal will be considered a wrongful dissociation and a breach of this Agreement. In the event of any such wrongful dissociation, the withdrawing Member will be liable to the remaining Members for any damages incurred by the remaining Members including but not limited to the loss of future earnings.
26. The voluntary withdrawal of a Member will have no effect upon the continuance of the Company.
27. It remains incumbent on the withdrawing Member to exercise this dissociation in good faith and to minimize any present or future harm done to the remaining Members as a result of the withdrawal.

**Involuntary Withdrawal of a Member**

28. Events leading to the involuntary withdrawal of a Member from the Company will include but not be limited to: death of a Member; Member mental incapacity; Member disability preventing reasonable participation in the Company; Member incompetence; breach of fiduciary duties by a Member; criminal conviction of a Member; Operation of Law against a Member or a legal judgment against a Member that can reasonably be expected to bring the business or societal reputation of the Company into disrepute. Expulsion of a Member can also occur on application by the Company or another Member, where it has been judicially determined that the Member: has engaged in wrongful conduct that adversely and materially affected the Company's business; has willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or to the other Members; or has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member.
29. The involuntary withdrawal of a Member will have no effect upon the continuance of the Company.

**Dissociation of a Member**

30. Where the Company consists of two or more Members, in the event of either a voluntary or involuntary withdrawal of a Member, if the remaining Members elect to purchase the interest of the withdrawing Member, the remaining Members will serve written notice of such election, including the purchase price and method and schedule of payment for the withdrawing Member's Interests, upon the withdrawing Member, their executor, administrator, trustee, committee or analogous fiduciary within a reasonable period after acquiring knowledge of the change in circumstance to the affected Member.
31. Valuation and distribution will be determined as described in the Valuation of Interest section of this Agreement.
32. Any remaining Members retain the right to seek damages from a dissociated Member where the dissociation resulted from a malicious or criminal act by the dissociated Member or where the dissociated Member had breached their fiduciary duty to the Company or was in breach of this Agreement or had acted in a way that could reasonably be foreseen to bring harm or damage to the Company or to the reputation of the Company.
33. A dissociated Member will only have liability for Company obligations that were incurred during their time as a Member. On dissociation of a Member, the Company will prepare, file, serve, and publish all notices required by law to protect the dissociated Member from liability for future Company obligations.
34. Where any remaining Members have purchased the interest of a dissociated Member, the purchase amount will be paid in full, but without interest, within 90 days of the date of withdrawal. The Company will retain exclusive rights to use of the trade name and firm name and all related brand and model names of the Company.

**Right of First Purchase**

35. Where the Company consists of two or more Members, in the event that a Member's Interest in the Company is or will be sold, due to any reason, the remaining Members will have a right of first purchase of that Member's Interest.

**Assignment of Interest**

36. In the event that a Member's interest in the company is transferred or assigned as the result of a court order or Operation of Law, the trustee in bankruptcy or other person acquiring that Member's Interests in the Company will only acquire that Member's economic rights and interests and will not acquire any other rights of that Member or be admitted as a Member of the Company or have the right to exercise any management or voting interests.

**Valuation of Interest**

37. Where the Company consists of two or more Members, a Member's financial interest in the Company will be in proportion to their Capital Contributions, inclusive of any Additional Capital Contributions.
38. In the absence of a written agreement setting a value, the value of the Company will be based on the fair market value appraisal of all Company assets (less liabilities) determined in accordance with generally accepted accounting principles (GAAP). This appraisal will be conducted by an independent accounting firm agreed to by all Members. An appraiser will be appointed within a reasonable period of the date of withdrawal or dissolution. The results of the appraisal will be binding on all Members.
39. No allowance will be made for goodwill, trade name, patents or other intangible assets, except where those assets have been reflected on the Company books immediately prior to valuation.

**Dissolution**

40. The Company may be dissolved by a unanimous vote of the Members. The Company will also be dissolved on the occurrence of events specified in the Act.
41. Upon Dissolution of the Company and liquidation of Company property, and after payment of all selling costs and expenses, the liquidator will distribute the Company assets to the following groups according to the following order of priority:
- a. in satisfaction of liabilities to creditors except Company obligations to current Members;
  - b. in satisfaction of Company debt obligations to current Members; and then
  - c. to the Member.

**Records**

42. The Company will at all times maintain accurate records of the following:
- a. Information regarding the status of the business and the financial condition of the Company.
  - b. A copy of the Company federal, state, and local income taxes for each year, promptly after becoming available.
  - c. Name and last known business, residential, or mailing address of each Member, as well as the date that person became a Member.
  - d. A copy of this Agreement and any articles or certificate of formation, as well as all amendments, together with any executed copies of any written powers of attorney pursuant to which this Agreement, articles or certificate, and any amendments have been executed.
  - e. The cash, property, and services contributed to the Company by each Member, along with a description and value, and any contributions that have been agreed to be made in the future.
43. Each Member has the right to demand, within a reasonable period of time, a copy of any of the above documents for any purpose reasonably related to their interest as a Member of the Company, at their expense.

**Books of Account**

44. Accurate and complete books of account of the transactions of the Company will be kept in accordance with generally accepted accounting principles (GAAP) and at all reasonable times will be available and open to inspection and examination by any Member. The books and records of the Company will reflect all the Company's transactions and will be appropriate and adequate for the business conducted by the Company.

**Banking and Company Funds**

45. The funds of the Company will be placed in such investments and banking accounts as will be designated by the Member. All withdrawals from these accounts will be made by the duly authorized agent or agents of the Company as appointed by unanimous consent of the Members. Company funds will be held in the name of the Company and will not be commingled with those

of any other person or entity.

#### **Audit**

46. Any of the Members will have the right to request an audit of the Company books. The cost of the audit will be borne by the Company. The audit will be performed by an accounting firm acceptable to all the Members. Not more than one (1) audit will be required by any or all of the Members for any fiscal year.

#### **Tax Treatment**

47. This Company is intended to be treated as a corporation, for the purposes of Federal and State Income Tax.

#### **Annual Report**

48. As soon as practicable after the close of each fiscal year, the Company will furnish to each Member an annual report showing a full and complete account of the condition of the Company including all information as will be necessary for the preparation of each Member's income or other tax returns. This report will consist of at least:
- a. A copy of the Company's federal income tax returns for that fiscal year.

#### **Goodwill**

49. The goodwill of the Company will be assessed at an amount to be determined by appraisal using generally accepted accounting principles (GAAP).

#### **Governing Law**

50. The Members submit to the jurisdiction of the courts of the State of New Mexico for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement.

#### **Force Majeure**

51. A Member will be free of liability to the Company where the Member is prevented from executing their obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Member has communicated the circumstance of the event to any and all other Members and where the Member has taken any and all appropriate action to satisfy his duties and obligations to the Company and to mitigate the effects of the event.

**Forbidden Acts**

- 52. No Member may do any act in contravention of this Agreement.
- 53. No Member may permit, intentionally or unintentionally, the assignment of express, implied or apparent authority to a third party that is not a Member of the Company.
- 54. No Member may do any act that would make it impossible to carry on the ordinary business of the Company.
- 55. No Member will have the right or authority to bind or obligate the Company to any extent with regard to any matter outside the intended purpose of the Company.
- 56. No Member may confess a judgment against the Company.
- 57. Any violation of the above forbidden acts will be deemed an Involuntary Withdrawal and may be treated accordingly by the remaining Members.

**Indemnification**

- 58. All Members will be indemnified and held harmless by the Company from and against any and all claims of any nature, whatsoever, arising out of a Member's participation in Company affairs. A Member will not be entitled to indemnification under this section for liability arising out of gross negligence or willful misconduct of the Member or the breach by the Member of any provisions of this Agreement.

**Liability**

- 59. A Member or any employee will not be liable to the Company or to any other Member for any mistake or error in judgment or for any act or omission believed in good faith to be within the scope of authority conferred or implied by this Agreement or the Company. The Member or employee will be liable only for any and all acts and omissions involving intentional wrongdoing.

**Liability Insurance**

- 60. The Company may acquire insurance on behalf of any Member, employee, agent or other person engaged in the business interest of the Company against any liability asserted against them or incurred by them while acting in good faith on behalf of the Company.

**Life Insurance**

61. The Company will have the right to acquire life insurance on the lives of any or all of the Members, whenever it is deemed necessary by the Company. Each Member will cooperate fully with the Company in obtaining any such policies of life insurance.

**Amendment of this Agreement**

62. No amendment or modification of this Agreement will be valid or effective unless in writing and signed by all Members.

**Title to Company Property**

63. Title to all Company property will remain in the name of the Company. No Member or group of Members will have any ownership interest in Company property in whole or in part.

**Miscellaneous**

64. Time is of the essence in this Agreement.
65. This Agreement may be executed in counterparts.
66. Headings are inserted for the convenience of the Members only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in a neutral gender include the masculine gender and the feminine gender and vice versa.
67. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the Members' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.
68. This Agreement contains the entire agreement between the Members. All negotiations and understandings have been included in this Agreement. Statements or representations that may have been made by any Member during the negotiation stages of this Agreement, may in some way be inconsistent with this final written Agreement. All such statements have no force or effect in respect to this Agreement. Only the written terms of this Agreement will bind the Members.

69. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon each Member's successors, assigns, executors, administrators, beneficiaries, and representatives.
70. Any notices or delivery required here will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the Members at the addresses contained in this Agreement or as the Members may later designate in writing.
71. All of the rights, remedies and benefits provided by this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law.

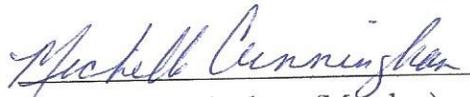
**Definitions**

72. For the purpose of this Agreement, the following terms are defined as follows:
  - a. "Additional Contribution" means Capital Contributions, other than Initial Contributions, made by Members to the Company.
  - b. "Capital Contribution" means the total amount of cash, property, or services contributed to the Company by any one Member.
  - c. "Distributions" means a payment of Company profits to the Members.
  - d. "Initial Contribution" means the initial Capital Contributions made by any Member to acquire an interest in the Company.
  - e. "Member's Interests" means the Member's collective rights, including but not limited to, the Member's right to share in profits, Member's right to a share of Company assets on dissolution of the Company, Member's voting rights, and Member's rights to participate in the management of the Company.
  - f. "Net Profits or Losses" means the net profits or losses of the Company as determined by generally accepted accounting principles (GAAP).
  - g. "Operation of Law" means rights or duties that are cast upon a party by the law, without any act or agreement on the part of the individual, including, but not limited to, an assignment for the benefit of creditors, a divorce, or a bankruptcy.

- h. "Principal Office" means the office whether inside or outside the State of New Mexico where the executive or management of the Company maintain their primary office.
- i. "Voting Members" means the Members who belong to a membership class that has voting power. Where there is only one class of Members, then those Members constitute the Voting Members.

IN WITNESS WHEREOF the Member has duly affixed their signature under hand and seal on this

1<sup>st</sup> day of JAN, 2010.

  
Michelle Cunningham (Member)

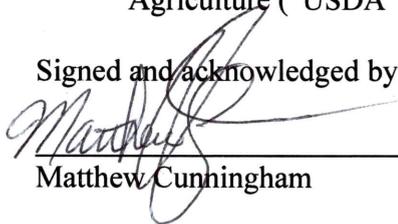


**AFFIDAVIT OF MATTHEW CUNNINGHAM**

I, Matthew Cunningham, swear or affirm under penalty of perjury that the following are true facts:

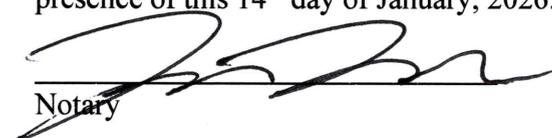
1. My name is Matthew Cunningham.
2. I am the Applicant/Appellant in Special Exception No./Project No. VA-2025-00154.
3. The property located at 2513 4<sup>th</sup> Street NW, Albuquerque, New Mexico 87102 is the subject of my request for variance in Special Exception No./Project No. VA-2025-00154 ("Subject Property").
4. The Subject Property is owned by a New Mexico limited liability company known as MOS Enterprises, LLC.
5. I have at all relevant times been married to Michell Cunningham.
6. Michell Cunningham is the member/owner of MOS Enterprises, LLC.
7. I have a community property interest in, and am therefore an owner of MOS Enterprises, LLC and the Subject Property.
8. I am an owner of Enchantment Snack Brands, LLC, which does business as Vigil's Beef Jerky.
9. Enchantment Snack Brands, LLC will be the occupant of the Subject Property.
10. Enchantment Snack Brands, LLC is regulated by the United States Department of Agriculture ("USDA").

Signed and acknowledged by:

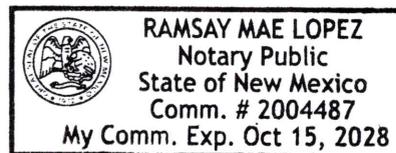
  
 \_\_\_\_\_  
 Matthew Cunningham

Date: 1/15/26

I am a notary public in New Mexico and I hereby affirm under penalty of perjury that Matthew Cunningham, who I first identified, came before me and signed the foregoing affidavit in my presence of this 14<sup>th</sup> day of January, 2026.

  
 \_\_\_\_\_  
 Notary

Stamp:



# APPEAL EXHIBIT D



# APPEAL EXHIBIT E

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE  <b>GRANT OF INSPECTION</b>	1. DATE  06/07/2021	2. ESTABLISHMENT NO.  34272
	3. DISTRICT CODE  40-41	
4. NAME AND MAILING ADDRESS OF APPLICANT <i>(Use 9 Digit Zip Code if Known)</i>  Enchantment Snack Brands LLC 8308 Ruidoso RD NE Albuquerque, NM 87109	5. DISTRICT OFFICE CONTACT INFORMATION <i>(mailing address, e-mail, phone number)</i>  1100 Commerce Street, Room 516 Dallas, TX 75242  214-767-9116	
6. LOCATION OF ESTABLISHMENT <i>(PHYSICAL STREET ADDRESS)</i> Telephone: 505-263-2998 Vigil's Beef Jerky                      Physical & Mailing Address 7625 2nd ST NW Albuquerque, New Mexico 87107	7. TYPE OF GRANT  <input type="checkbox"/> CONDITIONAL (VALIDATE HACCP PLAN) <input checked="" type="checkbox"/> REGULAR	
8. TYPE OF INSPECTION <i>(Check all that apply)</i>  <input checked="" type="checkbox"/> MEAT <input type="checkbox"/> POULTRY <input type="checkbox"/> EGG  <input type="checkbox"/> IMPORT <input type="checkbox"/> SILURIFORMES FISH	9. DATE OF INAUGURATION OF SERVICE  June 7, 2021 (original 2/27/07)	

**AGREEMENT AND CERTIFICATION:** A survey of your establishment at the location shown above indicates compliance with the applicable requirements in Title 9 CHAPTER III – FOOD SAFETY AND INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE regulations promulgated under the authority of the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act. Accordingly, inspection service is granted.

A copy of FSIS Form 5200-2, *Application for Federal Inspection*, is enclosed or attached. This application specifies the type of operation conducted at your establishment and contains your agreement and certification that you will conform strictly to applicable Federal law and regulations pertaining to the inspection of meat, poultry, Siluriformes fish or egg product or the importation of meat, poultry, Siluriformes fish or egg product.

Your establishment is under the supervision of the District Office. Contact the District Office if you need help in interpreting the provisions of the regulations

**REMARKS:**

This Grant is subject to processing and clearance under Section 401 of the Federal Meat Inspection Act and Section 18(a) of the Poultry Products Inspection Act.

This Grant is valid only for the applicant listed above whom is liable for any inspection overtime or holiday costs for the operation of the plant. Should the applicant decide to sell, rent, or lease this location, the applicant will continue to be liable for any charges until the District Manager receives written notification of the change.

This Grant of Inspection supersedes the Grant in effect for this establishment dated August 11, 2016; it is being issued to show a change of ownership in accordance with the application (FSIS 5200-2) dated May 18, 2021.

Processing operations are conducted at this establishment.

Ms. Jeannine Krein is the Frontline Supervisor; she may be contacted through the District Office in Dallas, Texas.

DISTRICT MANAGER SIGNATURE	<b>JENNIFER BEASLEY MCKEAN</b>	c=US, o=U.S. Government, ou=Department of Agriculture, 0.9.2342.19200300.100.1.1 =12001000063383, cn=JENNIFER BEASLEY MCKEAN	PRINT NAME  Jennifer Beasley-McKean, DVM
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Food Safety and Inspection Service, USDA

§ 417.2

**PART 417—HAZARD ANALYSIS AND  
CRITICAL CONTROL POINT  
(HACCP) SYSTEMS**

**§ 417.2 Hazard Analysis and HACCP  
Plan.**

- Sec.  
417.1 Definitions.  
417.2 Hazard Analysis and HACCP plan.  
417.3 Corrective actions.  
417.4 Validation, Verification, Reassessment.  
417.5 Records.  
417.6 Inadequate HACCP Systems.  
417.7 Training.  
417.8 Agency verification.

AUTHORITY: 7 U.S.C. 1633, 1901-1906; 21 U.S.C. 451-472, 601-695; 7 CFR 2.16, 2.53.

SOURCE: 61 FR 38668, July 25, 1996, unless otherwise noted.

**§ 417.1 Definitions.**

For purposes of this part, the following definitions shall apply:

*Corrective action.* Procedures to be followed when a deviation occurs.

*Critical control point.* A point, step, or procedure in a food process at which control can be applied and, as a result, a food safety hazard can be prevented, eliminated, or reduced to acceptable levels.

*Critical limit.* The maximum or minimum value to which a physical, biological, or chemical hazard must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

*Food safety hazard.* Any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

*HACCP System.* The HACCP plan in operation, including the HACCP plan itself.

*Hazard.* SEE *Food Safety Hazard*.

*Preventive measure.* Physical, chemical, or other means that can be used to control an identified food safety hazard.

*Process-monitoring instrument.* An instrument or device used to indicate conditions during processing at a critical control point.

*Responsible establishment official.* The individual with overall authority on-site or a higher level official of the establishment.

(a) *Hazard analysis.* (1) Every official establishment shall conduct, or have conducted for it, a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and identify the preventive measures the establishment can apply to control those hazards. The hazard analysis shall include food safety hazards that can occur before, during, and after entry into the establishment. A food safety hazard that is reasonably likely to occur is one for which a prudent establishment would establish controls because it historically has occurred, or because there is a reasonable possibility that it will occur in the particular type of product being processed, in the absence of those controls.

(2) A flow chart describing the steps of each process and product flow in the establishment shall be prepared, and the intended use or consumers of the finished product shall be identified.

(3) Food safety hazards might be expected to arise from the following:

- (i) Natural toxins;
- (ii) Microbiological contamination;
- (iii) Chemical contamination;
- (iv) Pesticides;
- (v) Drug residues;
- (vi) Zoonotic diseases;
- (vii) Decomposition;
- (viii) Parasites;
- (ix) Unapproved use of direct or indirect food or color additives; and
- (x) Physical hazards.

(b) *The HACCP plan.* (1) Every establishment shall develop and implement a written HACCP plan covering each product produced by that establishment whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, based on the hazard analysis conducted in accordance with paragraph (a) of this section, including products in the following processing categories:

- (i) Slaughter—all species.
- (ii) Raw product—ground.
- (iii) Raw product—not ground.
- (iv) Thermally processed—commercially sterile.
- (v) Not heat treated—shelf stable.
- (vi) Heat treated—shelf stable.
- (vii) Fully cooked—not shelf stable.

(viii) Heat treated but not fully cooked—not shelf stable.

(ix) Product with secondary inhibitors—not shelf stable.

(2) A single HACCP plan may encompass multiple products within a single processing category identified in this paragraph, if the food safety hazards, critical control points, critical limits, and procedures required to be identified and performed in paragraph (c) of this section are essentially the same, provided that any required features of the plan that are unique to a specific product are clearly delineated in the plan and are observed in practice.

(3) HACCP plans for thermally processed/commercially sterile products do not have to address the food safety hazards associated with microbiological contamination if the product is produced in accordance with the requirements of part 431 of this chapter.

(c) *The contents of the HACCP plan.* The HACCP plan shall, at a minimum:

(1) List the food safety hazards identified in accordance with paragraph (a) of this section, which must be controlled for each process.

(2) List the critical control points for each of the identified food safety hazards, including, as appropriate:

(i) Critical control points designed to control food safety hazards that could be introduced in the establishment, and

(ii) Critical control points designed to control food safety hazards introduced outside the establishment, including food safety hazards that occur before, during, and after entry into the establishment;

(3) List the critical limits that must be met at each of the critical control points. Critical limits shall, at a minimum, be designed to ensure that applicable targets or performance standards established by FSIS, and any other requirement set forth in this chapter pertaining to the specific process or product, are met;

(4) List the procedures, and the frequency with which those procedures will be performed, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

(5) Include all corrective actions that have been developed in accordance

with §417.3(a) of this part, to be followed in response to any deviation from a critical limit at a critical control point; and

(6) Provide for a recordkeeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring.

(7) List the verification procedures, and the frequency with which those procedures will be performed, that the establishment will use in accordance with §417.4 of this part.

(d) *Signing and dating the HACCP plan.* (1) The HACCP plan shall be signed and dated by the responsible establishment individual. This signature shall signify that the establishment accepts and will implement the HACCP plan.

(2) The HACCP plan shall be dated and signed:

(i) Upon initial acceptance;

(ii) Upon any modification; and

(iii) At least annually, upon reassessment, as required under §417.4(a)(3) of this part.

(e) Pursuant to 21 U.S.C. 456, 463, 608, and 621, the failure of an establishment to develop and implement a HACCP plan that complies with this section, or to operate in accordance with the requirements of this part, may render the products produced under those conditions adulterated.

[61 FR 38668, July 25, 1996, as amended at 62 FR 61009, Nov. 14, 1997; 83 FR 25308, May 31, 2018]

#### §417.3 Corrective actions.

(a) The written HACCP plan shall identify the corrective action to be followed in response to a deviation from a critical limit. The HACCP plan shall describe the corrective action to be taken, and assign responsibility for taking corrective action, to ensure:

(1) The cause of the deviation is identified and eliminated;

(2) The CCP will be under control after the corrective action is taken;

(3) Measures to prevent recurrence are established; and

(4) No product that is injurious to health or otherwise adulterated as a result of the deviation enters commerce.

(b) If a deviation not covered by a specified corrective action occurs, or if



United States  
Department of  
Agriculture  
  
Food Safety  
and Inspection  
Service

# FSIS Security Guidelines for Food Processors



Dear Establishment Owner/Operator:

The Food Safety and Inspection Service (FSIS) has prepared the enclosed, *FSIS Security Guidelines for Food Processors*, to assist Federal and State inspected plants that produce meat, poultry and egg products in identifying ways to strengthen their biosecurity protection. FSIS recognizes that inspected plants may also be aware of, and are adopting, guidelines from other government and private sector organizations and agencies. However, businesses or plants that do not have access to specialized security-planning advice should find these guidelines particularly useful as they develop and improve their food security plans.

These guidelines were developed to meet the particular needs of meat, poultry and egg processing plants and to be easily understood and readily adaptable by plant officials. While the guidelines are voluntary and plants may choose to adopt measures suggested by many different sources, it is vital that all food businesses take steps to ensure the security of their operations.

FSIS intends to provide these guidelines to our field employees who will assist in directing plants that seek further clarification or advice. However, inspectors will not mandate adoption of any guideline.

FSIS intends to continue working to enhance guidance to businesses engaged in the production and distribution of USDA-regulated food and to work with Food and Drug Administration (FDA) and other agencies to provide guidance for transportation, storage and handling. Guidelines for inspected establishments are a first step, but we recognize the need for protections from the farm to the consumer's table. We invite your comments as we work to strengthen these steps. Homeland Security for our food and agricultural sector requires a commitment by all parties--Federal, State, local and private. We trust that these guidelines will be useful in giving specific focus to the commitment that we all share.

If you have any questions or comments, please contact our Technical Service Center at 1-800-233-3935.

Sincerely,



Linda Swacina  
Assistant Administrator for Staff Services

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## Food Security Plan Management

- A food security management team and a food security management coordinator should be identified for each plant or company. Each member should be assigned clear responsibilities.
- A food security plan using established risk management principles should be developed and implemented. The plan should include procedures for handling threats and actual cases of product tampering and an evacuation plan for each facility.
- Corrective action taken in all cases of product tampering should ensure that adulterated or potentially injurious products do not enter commerce.
- The plan should include the immediate recall of adulterated products from trade and consumer channels. Safe handling and disposal of products contaminated with chemical or biological agents should also be included in the plan.



- A relationship should be established with appropriate analytical laboratories for possible assistance in the investigation of product-tampering cases.
- Procedures for notifying appropriate law enforcement and public health officials when a food security threat is received, or when evidence of actual product tampering is observed, should be detailed in the plan.
- Specially designated entry points for emergency personnel should be identified in the plan.
- Current local, State and Federal Government Homeland Security contacts and public health officials should be listed in the plan. This list should be updated regularly.
- Members of the food security management team should be trained in all provisions of the plan. Drills should be conducted periodically. The plan should be periodically reviewed and revised as needed.
- Food security inspections of the facility should be conducted regularly by plant officials to verify key provisions of the plan.
- All employees should be encouraged to report any sign of possible product tampering or break in the food security system. Consider implementing an award system or establishing performance standards related to food security consciousness.
- All threats and incidents of intentional product tampering should be immediately investigated and reported to the local law enforcement officials and the FSIS/State Inspector in-Charge.
- Liaison with local Homeland Security officials and other law enforcement officials should be pre-established by the food security management team.

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## Outside Security

- Plant boundaries should be secured to prevent unauthorized entry. "No Trespassing" signs should be posted.
- Integrity of the plant perimeter should be monitored for signs of suspicious activity or unauthorized entry.
- Outside lighting should be sufficient to allow detection of unusual activities.
- All access points into the establishment should be secured by guards, alarms, cameras or other security hardware, consistent with national and local fire and safety codes.
- Emergency exits should be alarmed and have self-locking doors that can be opened only from the inside.
- Doors, windows, roof openings, vent openings, trailer bodies, railcars and bulk storage tanks should be secured (e.g., locks, seals, sensors) at all times.





- Outside storage tanks for hazardous materials and potable water supply should be protected from, and monitored for, unauthorized access.
- An updated list of plant personnel with open or restricted access to the establishment should be maintained at the security office.
- Entry into establishments should be controlled by requiring positive identification (e.g., picture IDs, sign-in and sign-out at security or reception, etc.).
- Incoming and outgoing vehicles (both private and commercial) should be inspected for unusual cargo or activity.
- Parking areas for visitors or guests should be situated at a safe distance from the main facility. Vehicles of authorized visitors, guests and employees should be clearly marked (placards, decals, etc.).
- Truck deliveries should be verified against a roster of scheduled deliveries. Unscheduled deliveries should be held outside the plant premises, if possible, pending verification of shipper and cargo.

4

## Inside Security

### General Inside Security

- Restricted areas inside the plant should be clearly marked and secured.
- Access to central controls for airflow, water systems, electricity and gas should be restricted and controlled.
- Updated plant layout schematics should be available at strategic and secured locations in the plant.
- Airflow systems should include a provision for immediate isolation of contaminated areas or rooms.
- Emergency alert systems should be fully operational and tested, and locations of controls should be clearly marked.
- Access to in-plant laboratory facilities should be strictly controlled. Comprehensive and validated security and disposal procedures should be in place, particularly for the control of reagents, hazardous materials and live cultures of pathogenic bacteria.



5

- Visitors, guests and other non-plant employees (contractors, salespeople, truck drivers, etc.) should be restricted to non-product areas unless accompanied by an authorized plant representative.
- Computer data systems should be protected using passwords, network firewalls and effective and current virus detection systems.

### **Slaughter and Processing Security**

- Procedures should be in place to monitor the operation of pieces of equipment (blenders, choppers, poultry chill tanks, etc.) to prevent product tampering.
- A program should be in place to ensure the timely identification, segregation and security of all products involved in the event of deliberate product contamination.
- A validated procedure should be in place to ensure the trace-back and trace-forward of all raw materials and finished products.
- Projected and actual use of restricted ingredients should be verified at the end of each day, preferably by someone other than the employee who logs the ingredient.
- Returned goods should be examined for evidence of possible tampering before salvage or use in rework. Records should be kept on the use of all returned goods in rework.
- The integrity of packaging materials of all spices and restricted ingredients (including premixes prepared in the plant) should be verified before use.



- Accurate inventory of finished products should be maintained to allow detection of unexplained additions to or withdrawals from existing stock.
- Access to product production or holding areas should be restricted to plant employees and FSIS inspection personnel only.
- Plants should use a system that ensures clear identification of personnel to their specific functions (e.g., colored garb).
- An updated daily or shift roster of plant personnel should be maintained and distributed to plant supervisors.



## Storage Security

- Controlled access should be maintained for all product and ingredient storage areas. An access log may be maintained.
- Security inspection of all storage facilities (including temporary storage vehicles) should be performed regularly, and the results logged.
- A daily inventory of hazardous chemicals or other products should be made, and all discrepancies should be investigated immediately.
- Hazardous chemical storage areas or rooms should be secured and isolated from other parts of the plant. In addition, they should be constructed and safely vented in accordance with national or local building codes.

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## Shipping and Receiving Security

- All outgoing shipments should be sealed with tamper-proof, numbered seals that are included on the shipping documents.
- Establishments should require that incoming shipments be sealed with tamper-proof, numbered seals, and that the seal numbers be shown on the shipping documents for verification prior to entry to the plant.
- Shipping documents with suspicious alterations should be thoroughly investigated.
- All trailers on the premises should be locked and sealed when not being loaded or unloaded.
- A policy for off-hour deliveries should be established to ensure prior notice of such deliveries and require the presence of an authorized individual to verify and receive the shipment.
- Packaging integrity of all incoming shipments should be examined at the receiving dock for evidence of tampering.



- Advance notification (by phone, e-mail, fax) should be required from suppliers for all incoming deliveries. Notification should include pertinent details about the shipment, including the name of the driver.
- The FSIS Inspector-in-Charge should be notified immediately when animals with unusual behavior and symptoms are received at the plant.
- Loading docks should be secured to avoid unverified or unauthorized deliveries.
- The integrity of food security measures should be a significant consideration in the selection of suppliers of meat and non-meat ingredients, compressed gas, packaging materials and labels.



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## Water and Ice Supply Security

- Outside access to wells, potable water tanks and ice-making equipment should be secured from unauthorized entry.
- In-plant ice-making equipment and ice storage facilities should have controlled access.
- Potable and non-potable water lines in food processing areas should be inspected periodically for possible tampering.
- The plant should arrange for immediate notification by local health officials in the event the potability of the public water supply is compromised.

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## Mail Handling Security

- Mail handling activity should be done in a separate room or facility, away from in-plant food production/processing operations, if possible.
- Mail handlers should be trained to recognize and handle suspicious pieces of mail using U.S. Post Office guidelines.

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## Personnel Security

- A system of positive identification/recognition of all plant employees should be in place.
- Procedures should be established for controlled entry of employees into the plant during both working and non-working hours.
- New hires (seasonal, temporary, permanent, and contract workers) should be subjected to background checks before hiring.
- Orientation training on security procedures should be given to all plant employees.
- The plant should establish and enforce a policy on what personal items may and may not be allowed inside the plant and within production areas.



In the event of a biosecurity-related emergency, first contact your local law-enforcement authority.

If you have questions or need clarification about the guidelines, contact the FSIS Technical Service Center at: 1-800-233-3935.

For additional copies of the guidelines, go to:  
<http://www.fsis.usda.gov>

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

April 2002

APPEAL EXHIBIT H



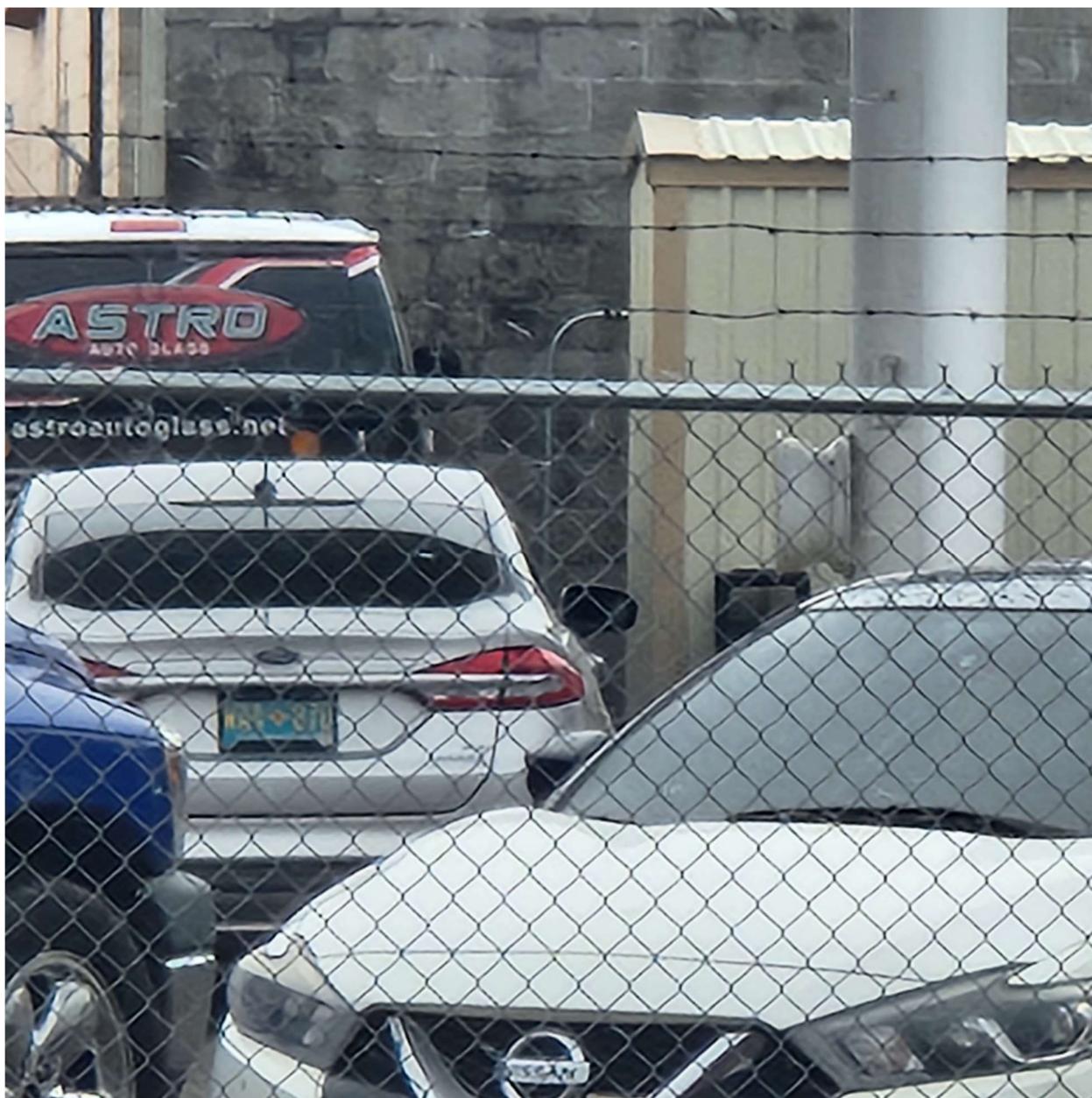
APPEAL EXHIBIT H



APPEAL EXHIBIT H



APPEAL EXHIBIT H



APPEAL EXHIBIT H





Wesley C. Jackson, Esq.  
Charlotte Rich Joseph, Esq.

January 13, 2026  
**LETTER OF AUTHORIZATION**

Wesley C Jackson  
Jackson Law, LLC  
4001 Indian School Rd. NE  
Suite 105  
Albuquerque, NM 87110  
Tel: (505) 881-7676  
Email: Wes@LegalActionNM.com

Re: Letter of Authorization  
Special Exception No./Project No. VA-2025-00154

To all whom this may concern,

Matthew Cunningham, Applicant/Appellant in the above referenced matter, hereby authorizes Jackson Law, LLC, through its attorney, Wesley C. Jackson, to represent me and all others with an ownership interest in connection with real property located at 2513 4<sup>th</sup> Street, NW, Albuquerque, New Mexico 87110.

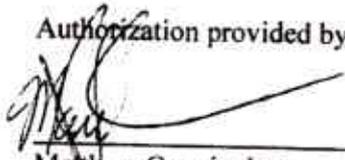
Such representation specifically includes, but is not necessarily limited to, any and all appeals of Special Exception No./Project No. VA-2025-00154. This authorization is effective as of this 13<sup>th</sup> day of January, 2026, and shall continue for a period of one (1) year thereafter unless sooner revoked in writing.

This authorization may be relied upon by any and all third parties.

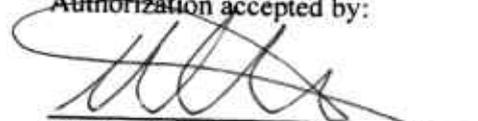
True and correct copies of this authorization, including electronic copies, shall be treated the same as originals.

My signature below means that I have read and understood this authorization, and agree to be bound by it.

Authorization provided by:

  
\_\_\_\_\_  
Matthew Cunningham

Authorization accepted by:

  
\_\_\_\_\_  
Wesley C. Jackson

Dated this 13<sup>th</sup> day of January, 2026.

4001 Indian School Road NE, Suite 105, Albuquerque, NM 87110  
Phone: (505) 881-7676; Facsimile: (505) 998-6603; [www.LegalActionNM.com](http://www.LegalActionNM.com)

Page 1 of 1



# SPECIAL EXCEPTION REFERRAL SHEET

Variance  
  Conditional Use  
  Major Permit  
  Other  
 Interpreter:  Yes  No

City of Albuquerque  
Planning Department

PLAN # \_\_\_\_\_ PROJECT # \_\_\_\_\_

<b>Date Accepted:</b>		<b>Hearing Date:</b>	
<b>Address of Request:</b>			
City:		State:	Zip:
Lot:	Block:	Zone:	Map pg.
Subdivision:		UPC#	
<b>Property Owner(s):</b>			
Mailing Address:			
City:		State:	Zip:
Phone:		Email:	
<b>Agent:</b>			
Mailing Address:			
City:		State:	Zip:
Phone:		Email:	
			<b>Fee Total:</b>

### Completed Application Requirements

- o Copy of relevant IDO section*
- o Letter of authorization (if applicable)*
- o Proof of notice to neighborhood association*
- o List of associations from Office of Neighborhood Coordination*
- o Proof of notice to property owners within 100ft*
- o Buffer map of property owners*
- o Photos (site and existing structures)*
- o Sketch plan*
- o Justification letter*
- o Sign posting and agreement*
- o Payment of fees*

All application materials must be submitted through <https://www.cabq.gov/planning/abq-plan>  
 For more information, please visit <https://www.cabq.gov/planning/boards-commissions/zoning-hearing-examiner>



ZONING OFFICIAL USE ONLY
<b>Request for exception to IDO Section:</b>
<b>Description of request:</b>
<b>Staff Comments:</b>

**Printable page****PARID: 101405929530922241****ARNELL ROSAURA TRUSTEE ARNELL RVT, C/O  
MOS ENTERPRISES LLC****2513 4TH ST****Class**

Class	Non Residential
Tax District	A1AM

**Current Owner**

Owner	ARNELL ROSAURA TRUSTEE ARNELL RVT C/O MOS ENTERPRISES LLC
Owner Mailing Address	8308 RUIDOSO RD NE
Unit	
City	ALBUQUERQUE
State	NM
Zip Code	87109 4954
Other Mailing Address	

**Ownership for Tax Year Selected**

Tax Year	2025
Owner Name	ARNELL ROSAURA TRUSTEE ARNELL RVT C/O MOS ENTERPRISES LLC
Owner Mailing Address	8308 RUIDOSO RD NE
Unit	
City	ALBUQUERQUE
State	NM
Zip Code	87109 4954
Other Mailing Address	

**Description**

Location Address	2513 4TH ST NW
City	ALBUQUERQUE
State	NM
Zip Code	87102
Property Description	MAP 36 TRS 36B1A & 36B2 & LOTS 3 THRU 6 BLK 2 TOWNER ADDN & E 7FT VAC ALLEY ADJ & LOTS 7 & 8 BLK 2 TOWNER ADDN & W 7FT
Public Improvement District	
Tax Increment Development Districts	

**Document #**

Document #:	2020006376 012120 RC - ENTRY BY JS 020320 CODED BY LV 012320
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**Real Property Attributes**

Primary Building SQ FT	10674
Year Built	1967
Lot Size (Acres)	1.0754
Land Use Code	RETAIL MULTI-OCCUPANCY
Style	

**Manufactured Home Attributes**

Make :  
License :  
VIN :  
Year :  
Size :



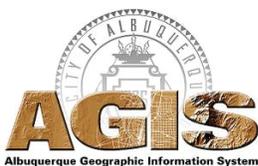
Site: 2513 4th St. NW

Sawmill/Wells Park - CPO-11

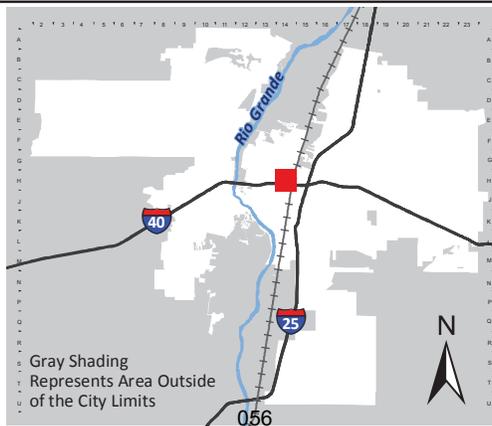
Martineztown/Santa Barbara - CPO-7

For more details about the Integrated Development Ordinance visit: <http://www.caba.gov/planning/codes-policies-regulations/integrated-development-ordinance>

# IDO Zone Atlas May 2018



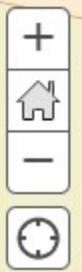
IDO Zoning information as of May 17, 2018  
The Zone Districts and Overlay Zones  
are established by the  
Integrated Development Ordinance (IDO).



Zone Atlas Page:  
**H-14-Z**

- Easement
- Escarpment
- Petroglyph National Monument
- Areas Outside of City Limits
- Airport Protection Overlay (APO) Zone
- Character Protection Overlay (CPO) Zone
- Historic Protection Overlay (HPO) Zone
- View Protection Overlay (VPO) Zone





Menaul Blvd NW

6th St NW

6th St NW

4th St NW

Towner Ave NW

H14

498

406

2599

398

2537

2503

2499

498

2505

406

2499

2445

057

9/24/2025

City of Albuquerque Planning Department

**Subject: Justification for Installation of a 5'-10" Steel Fence at 2513 4<sup>th</sup> St. NW**

Dear City of Albuquerque Planning Department,

I am writing to formally request approval for the installation of a 5'-10" tall steel fence at the property located at 2513 4<sup>th</sup> St NW. This letter serves as a justification for why this specific type of fencing is essential and in line with the city's safety, aesthetic, and community standards.

The primary purpose of this fence is to significantly enhance the **safety and security** of the property and its occupants. The proposed height of 5'-10" is necessary to deter unauthorized access and prevent trespassing, which has been a growing concern in the area. A fence of this height provides a clear and effective barrier, protecting occupants and property from potential security threats. Given the nature of the challenges we have faced, a standard, 3' fence would not provide the level of security required.

In addition to security, this project is designed with **aesthetics and durability** in mind. The steel material is a robust and long-lasting choice, capable of withstanding local weather conditions without requiring frequent maintenance. The proposed design is welded wire style, which will preserve a sense of openness while providing security, and will be finished in black to blend seamlessly with the neighborhood's character. This is not only a practical choice but also an investment in the long-term visual integrity of the property and the surrounding community.

Finally, the installation of this fence will contribute positively to the overall **property value and community well-being**. A well-maintained and secure property enhances the neighborhood's appeal, potentially increasing property values for all residents. By taking proactive measures to secure our property, we are helping to create a safer environment for everyone.

We believe the proposed 5'-10" steel fence is a reasonable and necessary improvement that addresses specific security needs while upholding the aesthetic standards of the City of Albuquerque. We are confident that this project aligns with the city's commitment to creating safe and beautiful communities.

Thank you for your time and consideration. We look forward to your approval and are available to provide any additional information needed.



# City of Albuquerque



## Legend

- Bernalillo County Parcels
- Corrales
- Edgewood
- Los Ranchos
- Rio Rancho
- Tijeras
- UNINCORPORATED

General Notes

No.	Revision/Issue	Date

Firm Name and Address

Project Name and Address

## Notes

All Fencing and gates are fabricated @ 5'10" height.  
 Finished height after installation is 6'0". Height will not exceed 6'0"

Project	Sheet
Date	
Scale	

227 0 113 227 Feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
 11/18/2025 © City of Albuquerque

1:1,362

The City of Albuquerque ("City") provides the data on this website as a service to the public. The City makes no warranty, representation, or guaranty as to the content, accuracy, timeliness, or completeness of any of the data provided at this website. Please visit <http://www.cabq.gov/abq-data/abq-data-disclaimer-1> for more information.  
 THIS MAP IS NOT TO BE USED FOR NAVIGATION



# City of Albuquerque



## Legend

- Bernalillo County Parcels
- Corrales
- Edgewood
- Los Ranchos
- Rio Rancho
- Tijeras
- UNINCORPORATED

General Notes

No.	Revision/Issue	Date

Firm Name and Address

Project Name and Address

Project	Sheet
Date	
Scale	

## Notes

All Fencing and gates are fabricated @ 5'10" height.  
 Finished height after installation is 6'0". Height will not exceed 6'0"

227 0 113 227 Feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
 11/18/2025 © City of Albuquerque

1:1,362

The City of Albuquerque ("City") provides the data on this website as a service to the public. The City makes no warranty, representation, or guaranty as to the content, accuracy, timeliness, or completeness of any of the data provided at this website. Please visit <http://www.cabq.gov/abq-data/abq-data-disclaimer-1> for more information.  
 THIS MAP IS NOT TO BE USED FOR NAVIGATION

Re: 2513 4th St NW

nearnorthvalley@gmail.com, nvcabq@gmail.com, jsabatini423@gmail.com, jasalazarm@gmail.com, peggynorton@yahoo.com

Re: 2513 4th St NW

Hello All,  
ASI has submitted for a small wall / fence permit for the referenced property. Relevant documents are attached.  
Thank you,

**Ryan C. Bogue**  
**Action Security Iron Inc // Action Security Iron LLC.**  
**204 Sin Nombre Ct. N.E // 1801 W Irvington Pl,**  
**Albuquerque, N.M. 87113 // Denver, CO 80223**  
**(p) 505-344-5471 // (p) 303-344-5471**



- 2513 4th street email notice..pdf (385K) ×
- 2513 4th street.pdf (1,318K) ×
- 2513 4th street.pdf (5,495K) ×
- Cunningham-2513 4th street dwg.pdf (659K) ×

Georgia | B | I | U | A | [List Icon] | [List Icon]

Send | [Text Icon] | [Image Icon]



Flores, Suzanna A. <Suzannaflores@cabq.gov>

to ryan@actionsecurityiron.com

**PLEASE NOTE:**

The neighborhood association contact information listed below is valid for 30 calendar days after today's date.

Dear Applicant:

Please find the neighborhood contact information listed below. Please make certain to read the information further down in this e-mail as it will help answer other questions you may have.

Association Name	Association Email	First Name	Last Name	Email	Address Line 1	City	State	Zip	Mobile Phone	Phone
Near North Valley NA	<a href="mailto:nearnorthvalleyna@gmail.com">nearnorthvalleyna@gmail.com</a>	Joe	Sabatini	<a href="mailto:jsabatini423@gmail.com">jsabatini423@gmail.com</a>	3514 6th Street NW	Albuquerque	NM	87107	5058507455	5053449212
Near North Valley NA	<a href="mailto:nearnorthvalleyna@gmail.com">nearnorthvalleyna@gmail.com</a>	Marit	Tully	<a href="mailto:nearnorthvalleyna@gmail.com">nearnorthvalleyna@gmail.com</a>	PO Box 6953	Albuquerque	NM	87197		5053857863
North Valley Coalition	<a href="mailto:nvcabq@gmail.com">nvcabq@gmail.com</a>	James	Salazar	<a href="mailto:jasalazarm@gmail.com">jasalazarm@gmail.com</a>	5025 Guadalupe Trail NW	Albuquerque	NM	87107	5054895040	
North Valley Coalition	<a href="mailto:nvcabq@gmail.com">nvcabq@gmail.com</a>	Peggy	Norton	<a href="mailto:peggy_norton@yahoo.com">peggy_norton@yahoo.com</a>	3810 11th Street NW	Albuquerque	NM	87107		5053459567

The ONC does not have any jurisdiction over any other aspect of your application beyond this neighborhood contact information. We can't answer questions about sign postings, permit status, site plans, buffers, or project plans, so we encourage you to contact the Planning Department at: 505-924-3857 Option #1, e-mail: [devhelp@cabq.gov](mailto:devhelp@cabq.gov), or visit: <https://www.cabq.gov/planning/online-planning-permitting-applications> with those types of questions.

Please note the following:

- You will need to e-mail each of the listed contacts and let them know that you are applying for an approval from the Planning Department for your project.
- Please use this online link to find the required forms you will need to submit your permit application. <https://www.cabq.gov/planning/urban-design-development/public-notice>.
- The Checklist you need for notifying neighborhood associations can be found here: <https://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance-1/public-notice>
- The Administrative Decision form you need for notifying neighborhood associations can be found here: <https://documents.cabq.gov/planning/online-forms/PublicNotice/Emailed-Notice-Administrative-Print&Fill.pdf>
- Once you have e-mailed the listed contacts in each neighborhood, you will need to attach a copy of those e-mails AND a copy of this e-mail from the ONC to your application and submit it to the Planning Department for approval.

If you have questions about what type of notification is required for your particular project or meetings that might be required, please click on the link below to see a table of different types of projects and what notification is required for each: <https://ido.abc-zone.com/integrated-development-ordinance-ido?document=1&outline-name=6-1%20Procedures%20Summary%20Table>

Thank you,

Suzie



**Suzie Flores**

Senior Administrative Assistant

Office of Neighborhood Coordination (ONC) | City Council Department | City of Albuquerque

(505) 768-3334 Office

E-mail: [suzannaflores@cabq.gov](mailto:suzannaflores@cabq.gov)

Website: [www.cabq.gov/neighborhoods](http://www.cabq.gov/neighborhoods)

From: [webmaster@cabq.gov](mailto:webmaster@cabq.gov) <[webmaster@cabq.gov](mailto:webmaster@cabq.gov)>

Sent: Monday, September 15, 2025 10:09 AM

To: Office of Neighborhood Coordination <[ryan@actionsecurityiron.com](mailto:ryan@actionsecurityiron.com)>

Cc: Office of Neighborhood Coordination <[onc@cabq.gov](mailto:onc@cabq.gov)>

Subject: Public Notice Inquiry Sheet Submission

**OFFICIAL PUBLIC NOTIFICATION FORM  
FOR MAILED OR ELECTRONIC MAIL NOTICE  
CITY OF ALBUQUERQUE PLANNING DEPARTMENT**



<b>PART I - PROCESS</b>	
Use <a href="#">Table 6-1-1</a> in the Integrated Development Ordinance (IDO) to answer the following:	
Application Type:	
Decision-making Body: Zone Hearing Examiner	
Pre-Application meeting required:	<input type="radio"/> Yes <input checked="" type="radio"/> No
Neighborhood meeting required:	<input type="radio"/> Yes <input checked="" type="radio"/> No
Mailed Notice required:	<input checked="" type="radio"/> Yes <input type="radio"/> No
Electronic Mail required:	<input checked="" type="radio"/> Yes <input type="radio"/> No
Is this a Site Plan Application:	<input type="radio"/> Yes <input checked="" type="radio"/> No <b>Note: if yes, see second page</b>
<b>PART II – DETAILS OF REQUEST</b>	
Address of property listed in application: 2513 4th St. NW, Alb. NM 87102	
Name of property owner: MOS Enterprises	
Name of applicant: Ryan Bogue	
Date, time, and place of public meeting or hearing, if applicable:	
Zoom on 12/16/25 starting at 9am	
Address, phone number, or website for additional information:	
<b>PART III - ATTACHMENTS REQUIRED WITH THIS NOTICE</b>	
<input checked="" type="checkbox"/>	Zone Atlas page indicating subject property.
<input checked="" type="checkbox"/>	Drawings, elevations, or other illustrations of this request.
<input type="checkbox"/>	Summary of pre-submittal neighborhood meeting, if applicable.
<input checked="" type="checkbox"/>	Summary of request, including explanations of deviations, variances, or waivers.
<b>IMPORTANT:</b>	
<b>PUBLIC NOTICE MUST BE MADE IN A TIMELY MANNER PURSUANT TO <a href="#">IDO §14-16-6-4(K)</a>. PROOF OF NOTICE WITH ALL REQUIRED ATTACHMENTS MUST BE PRESENTED UPON APPLICATION.</b>	

I certify that the information I have included here and sent in the required notice was complete, true, and accurate to the extent of my knowledge.

Ryan Bogue (Applicant signature) 9/24/25 (Date)

**Note:** Providing incomplete information may require re-sending public notice. Providing false or misleading information is a violation of the IDO pursuant to IDO §14-16-6-9(B)(3) and may lead to a denial of your application.

**OFFICIAL PUBLIC NOTIFICATION FORM  
FOR MAILED OR ELECTRONIC MAIL NOTICE  
CITY OF ALBUQUERQUE PLANNING DEPARTMENT**



**PART IV – ATTACHMENTS REQUIRED FOR SITE PLAN & LC APPLICATIONS ONLY**

Provide a site plan that shows, at a minimum, the following:

- a. Location of proposed buildings and landscape areas.
- b. Access and circulation for vehicles and pedestrians.
- c. Maximum height of any proposed structures, with building elevations.
- d. For residential development: Maximum number of proposed dwelling units.
- e. For non-residential development:
  - Total gross floor area of proposed project.
  - Gross floor area for each proposed use.

[Note: Items with an asterisk (\*) are required.]

## Public Notice of a Hearing before the Zoning Hearing Examiner in the City of Albuquerque

Date of Notice\*: 12/16/25

This notice of an application for a proposed project is provided as required by the Integrated Development Ordinance (IDO) [§14-16-6-4\(K\) Public Notice](#). This notice is being provided to (mark as relevant):

- Neighborhood Association Representatives on the attached list from the Office of Neighborhood Coordination.<sup>1</sup>
- Property Owners within 100 feet of the Subject Property.

### Project Information Required by IDO [§14-16-6-4\(K\)\(1\)\(a\)](#)

1. Subject Property Address\* 2513 4th St. NW ABQ, NM 87102 (zipcode)  
Location Description Lots 3 through 9, Towner addition, Tracts 36b1A and 36B2
2. Property Owner\* MOS Enterprises
3. Agent/Contractor (if other than the property owner) Action Security Iron Inc.
4. Application Type(s)<sup>2</sup>\* per IDO [Table 6-1-1](#):

- |  |  |
|--|--|
| <input type="checkbox"/> Conditional Use     | <input type="checkbox"/> Carport Permit          |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Major Wall/Fence Permit |
| <input type="checkbox"/> Other _____         |  |

Summary of project/request\*:

Seeking variance to install fence that is 5'10" tall in lieu of 3'0" tall. See justification letter and submittal illustration.

5. This application will be decided by the Zoning Hearing Examiner at a public hearing.

Hearing Date\*: 12/16/2025 ( T u e s d a y )

**The hearing will begin at 9:00AM via ZOOM.**

For Zoom details and the agenda, please visit the CABQ Planning Webpage:

<https://www.cabq.gov/planning/boards-commissions/zoning-hearing-examiner/zhe-agendas-action-sheets-decisions>

To contact staff, email [PlanningZHE@cabq.gov](mailto:PlanningZHE@cabq.gov) or call the Planning Department at 505-924-3860 and select the option for "Boards, Commissions, and ZHE signs."

Please note: You may submit written comments to the Zoning Hearing Examiner up to 6 days before the hearing. (Deadline is 5 pm on the Wednesday before the hearing.)

<sup>1</sup> If this box is marked, the Neighborhood Association Representative Contact List from the City's Office of Neighborhood Coordination must be included as an attachment.

<sup>2</sup> Other application types require separate forms available here: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance-1/public-notice>. Otherwise, please mark all that apply.

[Note: Items with an asterisk (\*) are required.]

6. Where more information about the project can be found\*:

Applicant name: Ryan Bogue

Email: ryan@actionsecurityiron.com Phone: 505-344-5471

Online website or project page: \_\_\_\_\_

Attachments:

Neighborhood Association Representative Contact List from the City’s Office of Neighborhood Coordination<sup>3\*</sup>

Others: \_\_\_\_\_

**Project Information Required for Mail/Email Notice by IDO §14-16-6-4(K)(1)(b):**

1. Zone Atlas Page(s)<sup>\*4</sup> H-14-Z

2. Project Illustrations, as relevant<sup>\*5</sup>

Architectural drawings

Elevations of the proposed building(s)

Other illustrations of the proposed application

*See attachments or the website/project page noted above for the items marked above.*

3. The following exceptions to IDO standards have been requested for this project\*:

Deviation(s)       Variance(s)       Waiver(s)

Explanation\*: 5'10" high steel fence

4. A Pre-submittal Neighborhood Meeting was required by Table 6-1-1:  Yes  No

Summary of the Pre-submittal Neighborhood Meeting, if one occurred:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Note: The meeting report is required to be provided in the application materials.]

**NOTE:** Pursuant to IDO §14-16-6-4(L), property owners within 330 feet and Neighborhood Associations within 660 feet may request a post-submittal facilitated meeting. If requested at least 15 calendar days before the public meeting/hearing date noted above, the facilitated meeting will be required. To request a facilitated meeting regarding this project, contact the Planning Department at [devhelp@cabq.gov](mailto:devhelp@cabq.gov) or 505-924-3860 and select option for “Boards, Commissions, and ZHE Signs.”

**Useful Links**

**Integrated Development Ordinance (IDO):** <https://ido.abc-zone.com>

**IDO Interactive Map:** <https://tinyurl.com/idozoningmap>

<sup>3</sup> Must be attached if this notice is to Neighborhood Association Representatives.

<sup>4</sup> Available online here: <http://data.cabq.gov/business/zoneatlas>

<sup>5</sup> While not required, it is recommended that a site plan be included showing the location of existing buildings, if any, and the proposed project.

# Language Access Notice:

We provide free interpretation services to help you communicate with us. If you need help, you can request interpretation at any service counter in our Department, located in the Plaza Del Sol building, 600 2nd Street NW, Albuquerque, NM 87102.

## Notificación de Acceso Lingüístico.

Ofrecemos servicios gratuitos de interpretación para ayudarlo a comunicarse con nosotros. Si necesita ayuda, puede solicitar servicios de interpretación en cualquier mostrador de servicio de nuestro Departamento, ubicado en el edificio Plaza Del Sol, 600 2nd Street NW, Albuquerque, NM 87102.

語言輔助通知。我們提供免費口譯服務，以幫助你與我們溝通。如果你需要幫助，你可以在我們部門的任何服務台請求口譯，服務台位於 Plaza Del Sol大樓，600 2nd Street NW，阿爾伯克基，NM 87102。

Thông báo về cách Tiếp cận Ngôn ngữ. Chúng tôi cung cấp các dịch vụ thông dịch miễn phí để giúp quý vị giao tiếp với chúng tôi. Nếu quý vị cần giúp đỡ, quý vị có thể yêu cầu thông dịch tại bất cứ quầy dịch vụ nào trong Sở của chúng tôi, tọa lạc tại tòa nhà Plaza Del Sol, 600 2nd Street NW, Albuquerque, NM 87102.

Saad Hadahwiis'a O'oolkaah bee dah na'astsooz. Nihi bik'inaaszil t'aadoo baahilinigoo 'ata' hashne' tse'esgizii ach'i' dzaadi! Dzaadi! Danihi dahootahgoo bee nihi-. Daa' danihi bidin nishli dzaadi! Dzaadi! Danihi bineesh'a yinishkeed 'ata' hashne' -di t'aa biholniihgoo tse'esgizii ket'aaz -di nihihgii dah diikaah, -k'eh -di tsin Plaza Del Sol Kiniit'aagoo, 600 2nd Kiniit'aa NW, Albuquerque, NM 87102.

Action Security Iron, Inc.  
204 Sin Nombre Ct. NE  
Albuquerque, NM 87113

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Action Security Iron, Inc.  
204 Sin Nombre Ct. NE  
Albuquerque, NM 87113

PIJ Properties

J.R. Donale 441

Masada Properties New Mexico LLC

Masada Ltd CO

Beltran Armando + Fabiola + Beltran Carmen + Young Kevin S

Cordova Property Holdings LLC  
5118 T...

Garcia Pamela A. Custodian Steven Sanchez

Marcos Daniel R + Marsha

AFAAQ Investments LLC

Otero Gilbert

Bennett Yvonne D  
714 Towner Ave. NW  
87112-1037

Joera Porfirio H + Leticia

Mercat Market Place LLC + Renaissance Acquisitions LLC  
0201 M...

Chavez Miguel Murillo  
4220 Red Sun Dr. SE  
Albuquerque, NM 87110-9600







**Zoning  
Hearing  
Examiner**

**Agenda Number: 06  
Project #: NA  
Case #: VA-2025-00154  
Hearing Date: December 16, 2025**

**Staff Report**

<b>Agent</b>	
<b>Applicant</b>	Matthew Cunningham
<b>Request</b>	Variance of 2'-10" to front fence height
<b>Legal Description</b>	Map 36 Tracts 36B1a & 36B2 & Lots 3 Thru 6 Blk 2, Towner Addn. & E 7ft vac alley adj & Lots 7 & 8 Blk 2 Towner Addn. & W 7ftvac Alley Adj & Lot 9 Blk 2 Towner
<b>Address</b>	2513 4 <sup>th</sup> St NW
<b>Size</b>	1.05 Acres
<b>Zoning</b>	MX-M

**Staff Recommendation**

DENIAL of VA-2025-00154 based on the 16 Findings found on page 11.

Leslie Naji  
Principal Planner

**Summary of Analysis**

The request is for a variance to front fence height. The request is primarily requested for security. MX-M front wall/fence height is limited to 3 ft. The requested fence height is 5'-10", requiring a variance of 2'10". The request shows an entry gate setback 30 ft. from the property line and includes a jog around an existing bus stop.

A fence added to the site would not be harmful to adjacent properties; however, the site is not different from other sites nearby and has no extraordinary conditions. A high fence along the property line within an MX-M zone is in opposition to the intent of the IDO for such areas.

No agency or community comments have been received.

---

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## *Table of Contents*

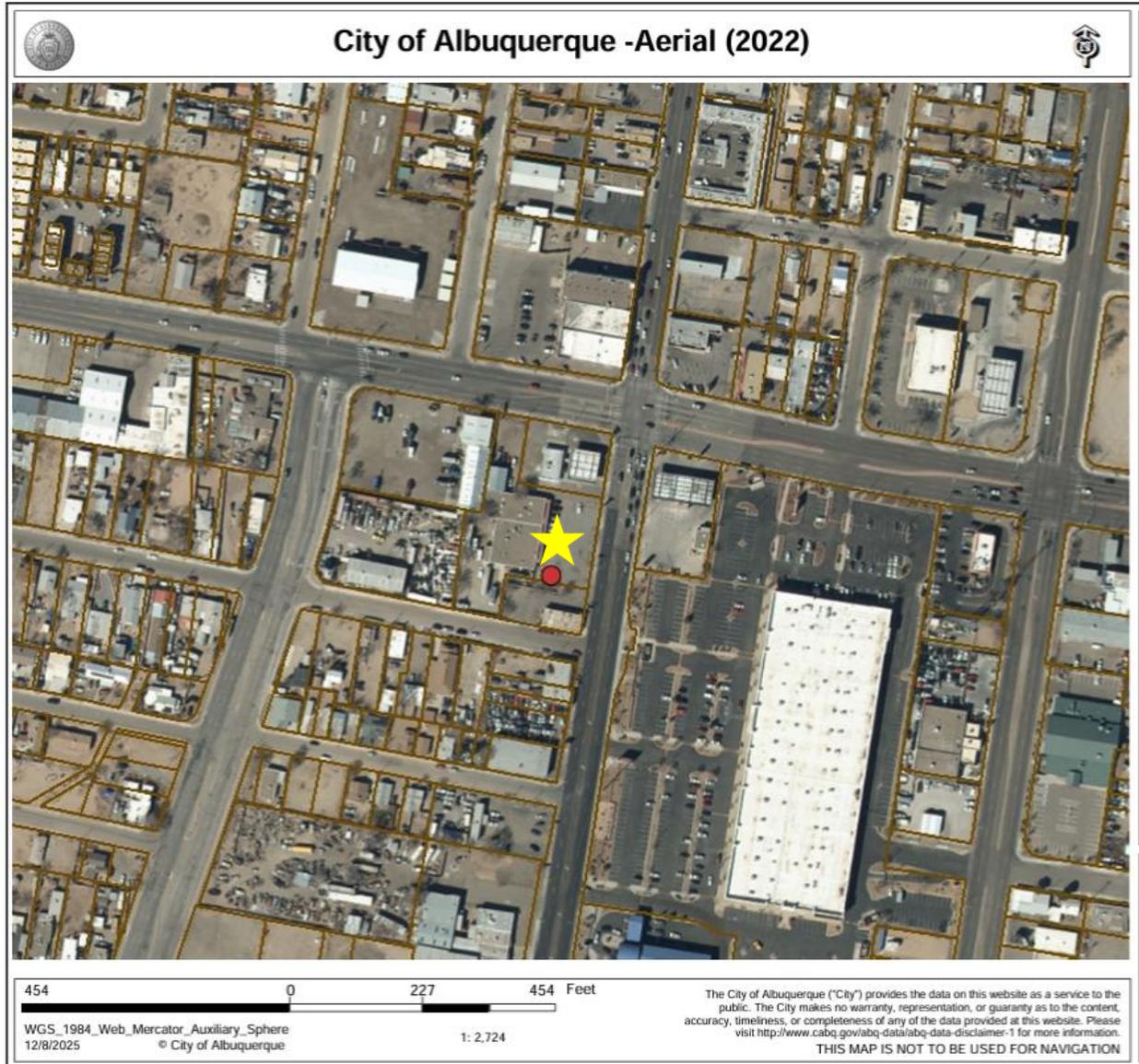
<b>I. MAPS .....</b>	<b>3</b>
AERIAL MAP .....	3
IDO ZONING MAP .....	4
LAND USE MAP .....	5
<b>II. INTRODUCTION .....</b>	<b>6</b>
REQUEST .....	6
SUBJECT SITE CONTEXT .....	6
ADJACENT STREET DESIGNATIONS .....	6
SITE HISTORY / RELATED REQUESTS .....	6
ZONING HEARING EXAMINER’S ROLE .....	7
<b>III. ANALYSIS OF CITY PLANS AND ORDINANCES .....</b>	<b>7</b>
ALBUQUERQUE / BERNALILLO COUNTY COMPREHENSIVE PLAN .....	7
<i>City Development Areas</i> .....	7
<i>Center &amp; Corridor Designations</i> .....	7
INTEGRATED DEVELOPMENT ORDINANCE (IDO) .....	7
<i>IDO Zoning</i> .....	7
<i>Overlay Zones</i> .....	7
<i>Definitions</i> .....	7
<b>IV. VARIANCE – ZHE .....</b>	<b>8</b>
IDO REVIEW AND DECISION CRITERIA .....	8
<b>V. AGENCY &amp; NEIGHBORHOOD CONCERNS .....</b>	<b>9</b>
REVIEWING AGENCIES .....	9
NO AGENCY COMMENTS HAVE BEEN RECEIVED .....	9
NEIGHBORHOOD/PUBLIC .....	9
<b>VI. CONCLUSION .....</b>	<b>10</b>
<b>FINDINGS, VARIANCE – ZHE .....</b>	<b>11</b>
<b>RECOMMENDATION .....</b>	<b>13</b>

**ATTACHMENTS**

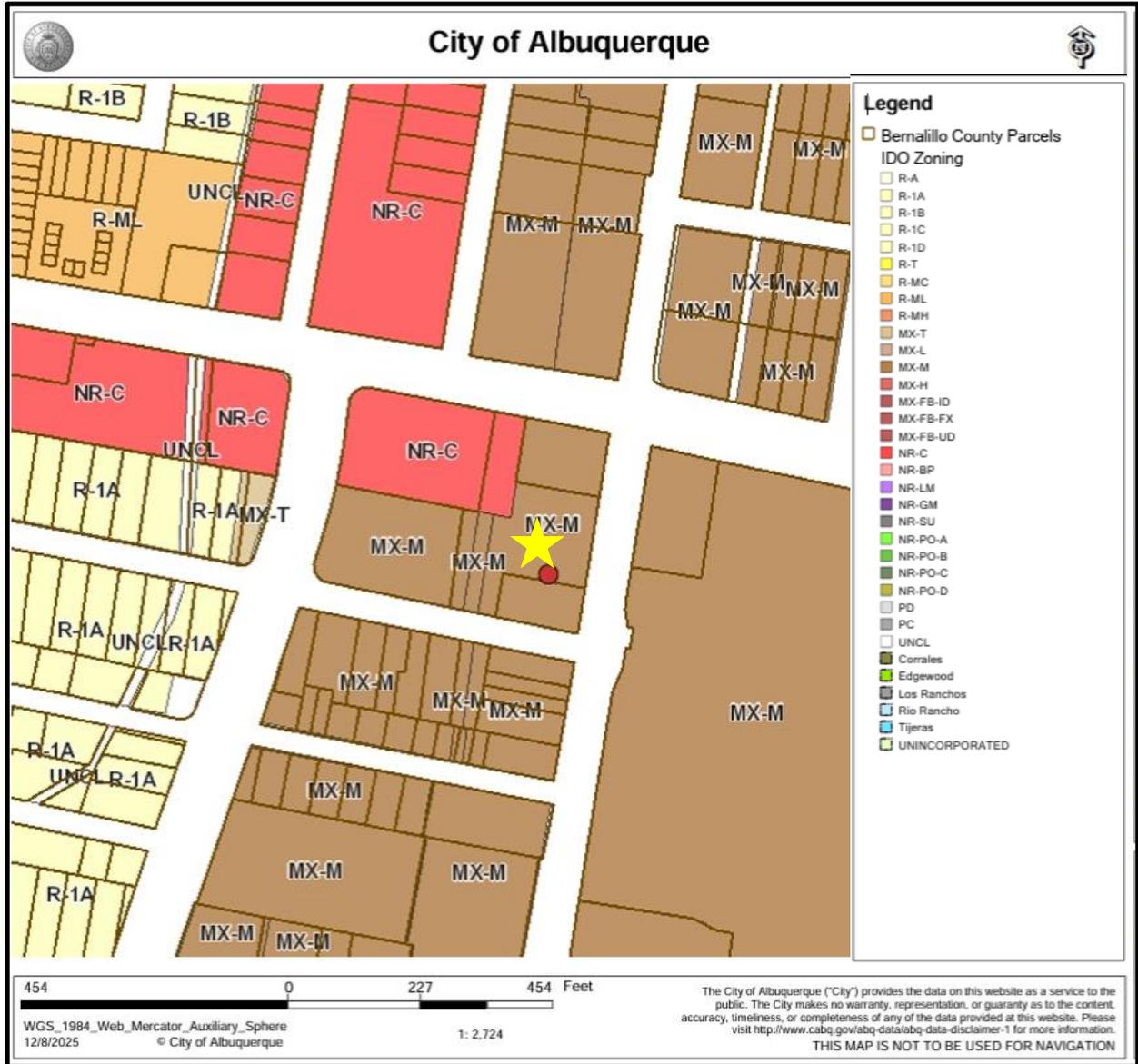
**A) PHOTOGRAPHS ..... A**  
**B) APPLICATION INFORMATION ..... B**  
**C) PUBLIC NOTICE ..... C**  
**D) SITE PLAN ..... D**

I. Maps

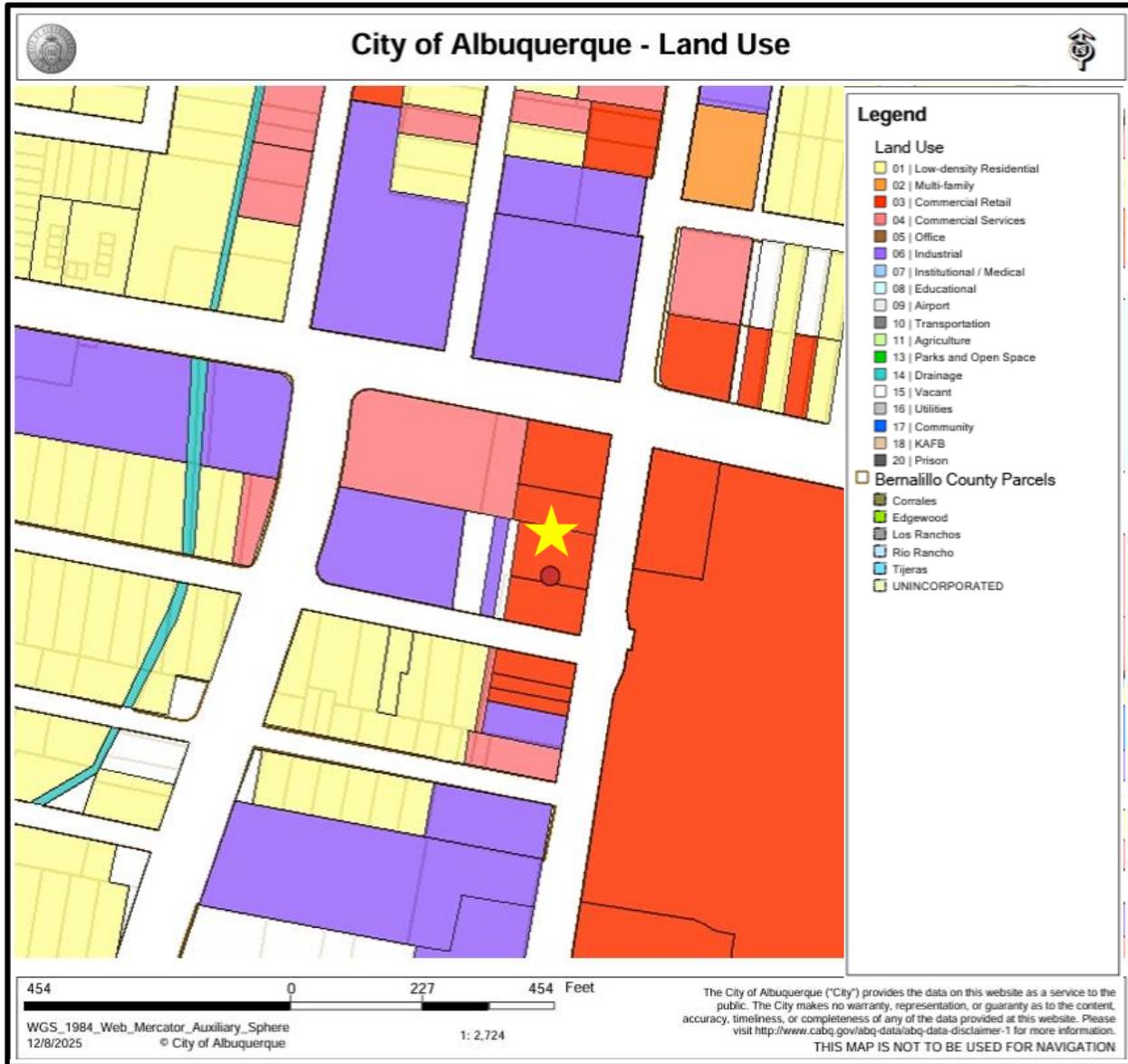
Aerial Map



**IDO Zoning Map**



*Land Use Map*



## **II. Introduction**

### **Request**

The applicant has submitted a variance request for front fence height. The request is primarily requested for security. MX-M front wall/fence height is limited to 3 ft. The requested fence height is 5'-10", requiring a variance of 2'10". The request shows an entry gate setback 30 ft. from the property line and includes a jog around an existing bus stop.

This project requires a variance pursuant to IDO §14-16-6-6(O).

### **Subject Site Context**

	<i>IDO Zoning</i>	<i>Comprehensive Plan Development Area</i>	<i>Existing Land Use</i>
<b>Subject Site</b>	<b>MX-M</b>	<b>Area of Change</b>	<b>Commercial/Retail</b>
<i>North</i>	MX-M	Area of Change	Commercial/Retail
<i>South</i>	MX-M	Area of Change	Commercial/Retail
<i>East</i>	MX-M	Area of Change	Commercial/Retail
<i>West</i>	MX-M/NR-C	Area of Change	Commercial/Industrial

The application is in an area of commercial and industrial sites. The requested variance to fence height will not affect neighboring property uses.

The site is a flat paved site, similar to other sites in the area.

### **Adjacent Street Designations**

The subject site is located near the intersection of 4<sup>th</sup> St. and Menaul Blvd.

4<sup>th</sup> St is designated as an Existing Minor Arterial by the 2040 Long Range Roadway System map, produced by the Mid-Region Council of Governments.

Menaul Blvd. is an Existing Community Principal Arterial.

### **Site History / Related Requests**

On May 21, 2019, Rose Arnell requests a conditional use to allow wholesaling and distribution on Lot 3, Block 2, Towner Addn, located at 2513 4th St NW, zoned MX-M under case number VA-2019-00099, Project# PR-2019-002223. The application was approved.

### ***Zoning Hearing Examiner's Role***

The Zoning Hearing Examiner (ZHE) holds public hearings and makes quasi-judicial decisions about special exceptions to zoning regulations in the Integrated Development Ordinance (IDO). The ZHE ensures compliance with zoning laws, considers public input, and issues written findings based on evidence presented and staff recommendations.

## **III. Analysis of City Plans and Ordinances**

### ***Albuquerque / Bernalillo County Comprehensive Plan***

#### *City Development Areas*

The subject site is located in an Area of Change as designated by the Comprehensive Plan. Areas of Change include Centers, Corridors, and Metropolitan Redevelopment Areas, where new development and redevelopment are desired and appropriate. These areas include undeveloped land and commercial or industrial zones that would benefit from infill or revitalization. Directing growth to Areas of Change is intended to reduce development pressure on established neighborhoods and rural areas, minimizing infill or redevelopment at a scale and density that could negatively impact their character. Areas of Change are intended to be the focus of urban-scale development that benefits job growth and housing opportunities.

#### *Center & Corridor Designations*

Identify designation of adjacent **corridor** and its intent

Identify designation of **centers** and intent

### ***Integrated Development Ordinance (IDO)***

#### *IDO Zoning*

In May 2018, the Integrated Development Ordinance replaced the City's Zoning Code, and the property's zoning converted from X to XX. The purpose of the **XX-X** zone district is to provide [see purpose in §14-16-2].

Is the proposed use permissive under the current zoning?

#### *Overlay Zones*

Not Applicable

#### *Definitions*

Front Lot Line: A legal boundary of a lot that abuts a street. On a corner lot, the side with the street number address is the front lot line. For the purposes of determining setback requirements on an interior lot that does not abut a street, the lot is not

considered to have a front lot line. In that case, all lot lines would be considered side lot lines. For a through lot, the property owner may designate which of the 2 lot lines is the front lot line.

Mixed-use Zone District: Any zone district categorized as Mixed-use in Part 14-16-2 of this IDO.

Setback:

1. A required distance between a structure and a lot line.
2. On an interior lot not abutting a street, side setbacks shall be followed for all lot lines.

Variance: Exceptions to dimensional standards or variations from the strict, literal application of standards in this IDO or the DPM. Variances from IDO standards are reviewed and decided by the ZHE or EPC, while Variances from technical standards in the DPM or related to projects in public rights-of-way are decided by the DHO. The allowable use of premises may never be changed via a Variance. See also Waiver and Use Definitions for Allowable Use.

Wall: A vertical structure of masonry (which includes stone, clay, brick, and poured concrete), wood, plaster, or other material that defines or encloses an area. Where the IDO provides standards about the wall of a building, the term “façade” is used, except for signage on buildings, which uses the term “wall sign.” Unless specified otherwise in this IDO, this term includes walls, fences, perimeter walls, courtyard walls, and retaining walls. A post that supports a structure other than a wall, such as a sign or a carport, is not considered a wall.

Wall Height: For a perimeter wall along the front lot line, wall height shall be measured from the finished grade on the public side of the wall. For other perimeter walls along other lot lines or for walls between the front lot line and the front façade of the primary building, wall height shall be measured from the finished grade on the side of the wall that provides the taller wall height. Wall height does not include decorative or incidental features, such as pilasters or fence posts, that are allowed or required by this IDO.

#### ***IV. Variance – ZHE***

##### ***IDO Review and Decision Criteria***

Pursuant to IDO §14-16-6-6(O) (Review and Decision Criteria), An application for a Variance – ZHE shall be approved if it meets all of the following criteria.

(O)(3)(a) The wall is proposed on a lot that meets all of the following criteria.

1. There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location,

surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties result from strict compliance with the minimum standards.

*There is nothing physically unique about the site, it being a flat, paved, rectangular site. Portions of the fence are pulled back from the property line, being more in keeping with a tall fence in a Mixed-Use zone.*

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

*The proposed fence would not be materially contrary to the public safety, health, or welfare.*

3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.

*The proposed fence would not impact adjacent properties; however, the layout requires jogging further into the subject property to accommodate pedestrian movement around a bus stop.*

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

*The IDO has a provision for taller fences within a mixed-use zone. This allows for a 5 ft high fence if setback 10 ft from the property line. A 5'-10" fence along the property line undermines the intent of the IDO to make mixed-use zones pedestrian friendly and accessible.*

5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

*A 5'-10" fence is not the minimum variance that could address the concerns of the applicant.*

## ***V. Agency & Neighborhood Concerns***

### ***Reviewing Agencies***

Transportation requested a clear site triangle and fence details prior to any approval.

### ***Neighborhood/Public***

The Near North Valley Neighborhood Association and the North Valley Coalition of Neighborhood Associations were notified of this request as were property owners within 100 ft. As of this writing, not comments have been received.

## ***VI. Conclusion***

The request is for a variance to front fence height. The request is primarily requested for security. MX-M front wall/fence height is limited to 3 ft. The requested fence height is 5'-10", requiring a variance of 2'10". The request shows an entry gate setback 30 ft. from the property line and includes a jog around an existing bus stop.

A fence added to the site would not be harmful to adjacent properties; however, the site is not different from other sites nearby and has no extraordinary conditions. A high fence along the property line within an MX-M zone is in opposition to the intent of the IDO for such areas.

Compliance with a taller fence for mixed-use zones, placing the fence back 10 ft. from the property line would be a more appropriate location.

***Findings, Variance – ZHE***

***Case# VA-2025-00154***

1. This is a request for a Variance for Map 36 Tracts 36B1a & 36B2 & Lots 3 Thru 6 Blk 2, Towner Addn. & E 7ft vac alley adj & Lots 7 & 8 Blk 2 Towner Addn. & W 7ftvac Alley Adj & Lot 9 Blk 2 Towner, located at 2513 4th St NW, and containing approximately 1.05 Acres.
2. The request is for a variance of front wall/fence height from 3ft. to 5ft 10 in.
3. Applicant is requesting a Variance of wall height, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“IDO”) Section 14-16-6-6(O).
4. Applicant has authority to pursue this Application, pursuant to 14-16-6-4(D).
5. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
6. Applicant is not required to offer a meeting to Indian Nations, Tribes, and Pueblos before filing the application, pursuant to IDO Section 14-16-6-4(B).
7. The Planning Director’s delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
8. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).
9. Applicant has sent an electronic mail notice to the email addresses on file with the Office of Neighborhood Coordination for each pertinent Neighborhood Association as required by IDO Section 14-16-6-4(J)(2).
10. Applicant has sent mailed notice to all property owners within 100 feet of the subject property as required by IDO Section 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).
12. The Subject Property is located in the MX-M zone
13. Therefore, a front fence taller than 3 feet requires a Variance Approval pursuant to IDO Subsection 14-16-6-6(O).
14. IDO Section 14-16-6-6(O)(3)(a) (Review and Decision Criteria– Variance) reads: “An application for a Variance - ZHE shall be approved if it meets all of the following criteria:
  1. *There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an*

*extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties result from strict compliance with the minimum standards.*

There is nothing physically unique about the site, it being a flat, paved, rectangular site. Portions of the fence are pulled back from the property line, being more in keeping with a tall fence in a Mixed-Use zone.

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

The proposed fence would not be materially contrary to the public safety, health, or welfare.

3. *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*

The proposed fence would not impact adjacent properties; however, the layout requires jogging further into the subject property to accommodate pedestrian movement around a bus stop.

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

*The IDO has a provision for taller fences within a mixed-use zone. This allows for a 5 ft high fence if setback 10 ft from the property line. A 5'-10" fence along the property line undermines the intent of the IDO to make mixed-use zones pedestrian friendly and accessible.*

5. *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*

*A 5'-10" fence is not the minimum variance that could address the concerns of the applicant.*

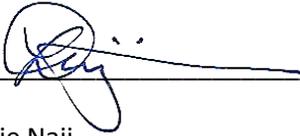
15. There Has been no Neighborhood/public support or opposition.

16. Staff has reviewed the project and finds that the request for a variance of 2'-10" along the property line within a mixed-use zone does not met the requirements for such a variance.

***Recommendation***

***DENIAL of Case #: VA-2025-00154 a request for Variance to front wall/fence height for Map 36 Tracts 36B1a & 36B2 & Lots 3 Thru 6 Blk 2, Towner Addn. & E 7ft vac alley adj & Lots 7 & 8 Blk 2 Towner Addn. & W 7ftvac Alley Adj & Lot 9 Blk 2 Towner, located at 2513 4th St NW, based on the preceding 16 Findings.***

---



Leslie Naji  
Principal Planner  
**Urban Design and Development Division**

Notice of Decision cc list:

List will be finalized subsequent to the ZHE hearing.

A) PHOTOGRAPHS



Site from street looking northwest



Closer image of parking striping



Property across the street with setback fencing and landscaping.

Google Earth  
© 2025 Google

## B) APPLICATION INFORMATION

9/24/2025

City of Albuquerque Planning Department

**Subject: Justification for Installation of a 5'-10" Steel Fence at 2513 4<sup>th</sup> St. NW**

Dear City of Albuquerque Planning Department,

I am writing to formally request approval for the installation of a 5'-10" tall steel fence at the property located at 2513 4<sup>th</sup> St NW. This letter serves as a justification for why this specific type of fencing is essential and in line with the city's safety, aesthetic, and community standards.

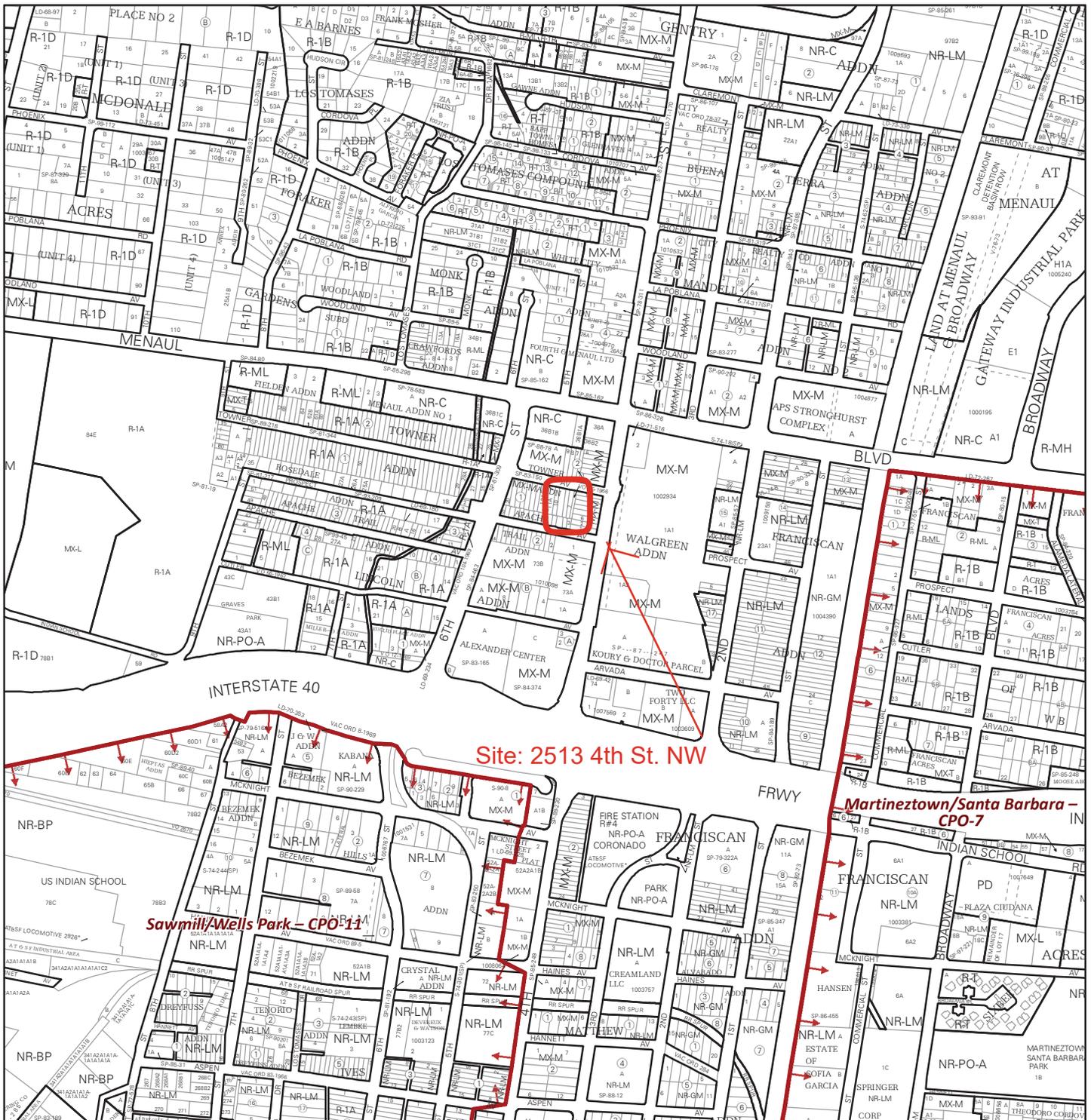
The primary purpose of this fence is to significantly enhance the **safety and security** of the property and its occupants. The proposed height of 5'-10" is necessary to deter unauthorized access and prevent trespassing, which has been a growing concern in the area. A fence of this height provides a clear and effective barrier, protecting occupants and property from potential security threats. Given the nature of the challenges we have faced, a standard, 3' fence would not provide the level of security required.

In addition to security, this project is designed with **aesthetics and durability** in mind. The steel material is a robust and long-lasting choice, capable of withstanding local weather conditions without requiring frequent maintenance. The proposed design is welded wire style, which will preserve a sense of openness while providing security, and will be finished in black to blend seamlessly with the neighborhood's character. This is not only a practical choice but also an investment in the long-term visual integrity of the property and the surrounding community.

Finally, the installation of this fence will contribute positively to the overall **property value and community well-being**. A well-maintained and secure property enhances the neighborhood's appeal, potentially increasing property values for all residents. By taking proactive measures to secure our property, we are helping to create a safer environment for everyone.

We believe the proposed 5'-10" steel fence is a reasonable and necessary improvement that addresses specific security needs while upholding the aesthetic standards of the City of Albuquerque. We are confident that this project aligns with the city's commitment to creating safe and beautiful communities.

Thank you for your time and consideration. We look forward to your approval and are available to provide any additional information needed.



Site: 2513 4th St. NW

Sawmill/Wells Park - CPO-11

Martineztown/Santa Barbara - CPO-7

For more details about the Integrated Development Ordinance visit: <http://www.caba.gov/planning/codes-policies-regulations/integrated-development-ordinance>

## IDO Zone Atlas May 2018

IDO Zoning information as of May 17, 2018  
The Zone Districts and Overlay Zones  
are established by the  
Integrated Development Ordinance (IDO).

089

Zone Atlas Page:  
**H-14-Z**

- Easement
- Areas Outside of City Limits
- Airport Protection Overlay (APO) Zone
- Character Protection Overlay (CPO) Zone
- Historic Protection Overlay (HPO) Zone
- View Protection Overlay (VPO) Zone

Escarpment  
Petroglyph National Monument  
View Protection Overlay (VPO) Zone

0 250 500 1,000 Feet



C) PUBLIC NOTICE



OFFICIAL PUBLIC NOTIFICATION FORM
FOR MAILED OR ELECTRONIC MAIL NOTICE
CITY OF ALBUQUERQUE PLANNING DEPARTMENT



PART I - PROCESS
Use Table 6-1-1 in the Integrated Development Ordinance (IDO) to answer the following:
Application Type:
Decision-making Body: Zone Hearing Examiner
Pre-Application meeting required: Yes No
Neighborhood meeting required: Yes No
Mailed Notice required: Yes No
Electronic Mail required: Yes No
Is this a Site Plan Application: Yes No Note: if yes, see second page
PART II - DETAILS OF REQUEST
Address of property listed in application: 2513 4th St. NW, Alb. NM 87102
Name of property owner: MOS Enterprises
Name of applicant: Ryan Bogue
Date, time, and place of public meeting or hearing, if applicable:
Zoom on 12/16/25 starting at 9am
Address, phone number, or website for additional information:
PART III - ATTACHMENTS REQUIRED WITH THIS NOTICE
[checked] Zone Atlas page indicating subject property.
[checked] Drawings, elevations, or other illustrations of this request.
[ ] Summary of pre-submittal neighborhood meeting, if applicable.
[checked] Summary of request, including explanations of deviations, variances, or waivers.
IMPORTANT:
PUBLIC NOTICE MUST BE MADE IN A TIMELY MANNER PURSUANT TO IDO §14-16-6-4(K).
PROOF OF NOTICE WITH ALL REQUIRED ATTACHMENTS MUST BE PRESENTED UPON APPLICATION.

I certify that the information I have included here and sent in the required notice was complete, true, and accurate to the extent of my knowledge.

Ryan Bogue (Applicant signature) 9/24/25 (Date)

Note: Providing incomplete information may require re-sending public notice. Providing false or misleading information is a violation of the IDO pursuant to IDO §14-16-6-9(B)(3) and may lead to a denial of your application.

**OFFICIAL PUBLIC NOTIFICATION FORM  
FOR MAILED OR ELECTRONIC MAIL NOTICE  
CITY OF ALBUQUERQUE PLANNING DEPARTMENT**



**PART IV – ATTACHMENTS REQUIRED FOR SITE PLAN & LC APPLICATIONS ONLY**

Provide a site plan that shows, at a minimum, the following:

- a. Location of proposed buildings and landscape areas.
- b. Access and circulation for vehicles and pedestrians.
- c. Maximum height of any proposed structures, with building elevations.
- d. For residential development: Maximum number of proposed dwelling units.
- e. For non-residential development:
  - Total gross floor area of proposed project.
  - Gross floor area for each proposed use.

[Note: Items with an asterisk (\*) are required.]

## Public Notice of a Hearing before the Zoning Hearing Examiner in the City of Albuquerque

Date of Notice\*: 12/16/25

This notice of an application for a proposed project is provided as required by the Integrated Development Ordinance (IDO) [§14-16-6-4\(K\) Public Notice](#). This notice is being provided to (mark as relevant):

- Neighborhood Association Representatives on the attached list from the Office of Neighborhood Coordination.<sup>1</sup>
- Property Owners within 100 feet of the Subject Property.

### Project Information Required by IDO [§14-16-6-4\(K\)\(1\)\(a\)](#)

1. Subject Property Address\* 2513 4th St. NW ABQ, NM 87102 (zipcode)  
Location Description Lots 3 through 9, Towner addition, Tracts 36b1A and 36B2
2. Property Owner\* MOS Enterprises
3. Agent/Contractor (if other than the property owner) Action Security Iron Inc.
4. Application Type(s)<sup>2</sup>\* per IDO [Table 6-1-1](#):

- |  |  |
|--|--|
| <input type="checkbox"/> Conditional Use     | <input type="checkbox"/> Carport Permit          |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Major Wall/Fence Permit |
| <input type="checkbox"/> Other _____         |  |

Summary of project/request\*:

Seeking variance to install fence that is 5'10" tall in lieu of 3'0" tall. See justification letter and submittal illustration.

5. This application will be decided by the Zoning Hearing Examiner at a public hearing.

Hearing Date\*: 12/16/2025 ( T u e s d a y )

**The hearing will begin at 9:00AM via ZOOM.**

For Zoom details and the agenda, please visit the CABQ Planning Webpage:

<https://www.cabq.gov/planning/boards-commissions/zoning-hearing-examiner/zhe-agendas-action-sheets-decisions>

To contact staff, email [PlanningZHE@cabq.gov](mailto:PlanningZHE@cabq.gov) or call the Planning Department at 505-924-3860 and select the option for "Boards, Commissions, and ZHE signs."

Please note: You may submit written comments to the Zoning Hearing Examiner up to 6 days before the hearing. (Deadline is 5 pm on the Wednesday before the hearing.)

<sup>1</sup> If this box is marked, the Neighborhood Association Representative Contact List from the City's Office of Neighborhood Coordination must be included as an attachment.

<sup>2</sup> Other application types require separate forms available here: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance-1/public-notice>. Otherwise, please mark all that apply.

[Note: Items with an asterisk (\*) are required.]

6. Where more information about the project can be found\*:

Applicant name: Ryan Bogue

Email: ryan@actionsecurityiron.com Phone: 505-344-5471

Online website or project page: \_\_\_\_\_

Attachments:

Neighborhood Association Representative Contact List from the City’s Office of Neighborhood Coordination<sup>3\*</sup>

Others: \_\_\_\_\_

**Project Information Required for Mail/Email Notice by IDO §14-16-6-4(K)(1)(b):**

1. Zone Atlas Page(s)<sup>\*4</sup> H-14-Z

2. Project Illustrations, as relevant<sup>\*5</sup>

Architectural drawings

Elevations of the proposed building(s)

Other illustrations of the proposed application

*See attachments or the website/project page noted above for the items marked above.*

3. The following exceptions to IDO standards have been requested for this project\*:

Deviation(s)       Variance(s)       Waiver(s)

Explanation\*: 5'10" high steel fence

4. A Pre-submittal Neighborhood Meeting was required by Table 6-1-1:  Yes  No

Summary of the Pre-submittal Neighborhood Meeting, if one occurred:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Note: The meeting report is required to be provided in the application materials.]

**NOTE:** Pursuant to IDO §14-16-6-4(L), property owners within 330 feet and Neighborhood Associations within 660 feet may request a post-submittal facilitated meeting. If requested at least 15 calendar days before the public meeting/hearing date noted above, the facilitated meeting will be required. To request a facilitated meeting regarding this project, contact the Planning Department at [devhelp@cabq.gov](mailto:devhelp@cabq.gov) or 505-924-3860 and select option for “Boards, Commissions, and ZHE Signs.”

**Useful Links**

**Integrated Development Ordinance (IDO):** <https://ido.abc-zone.com>

**IDO Interactive Map:** <https://tinyurl.com/idozoningmap>

<sup>3</sup> Must be attached if this notice is to Neighborhood Association Representatives.

<sup>4</sup> Available online here: <http://data.cabq.gov/business/zoneatlas>

<sup>5</sup> While not required, it is recommended that a site plan be included showing the location of existing buildings, if any, and the proposed project.

# Language Access Notice:

We provide free interpretation services to help you communicate with us. If you need help, you can request interpretation at any service counter in our Department, located in the Plaza Del Sol building, 600 2nd Street NW, Albuquerque, NM 87102.

## Notificación de Acceso Lingüístico.

Ofrecemos servicios gratuitos de interpretación para ayudarlo a comunicarse con nosotros. Si necesita ayuda, puede solicitar servicios de interpretación en cualquier mostrador de servicio de nuestro Departamento, ubicado en el edificio Plaza Del Sol, 600 2nd Street NW, Albuquerque, NM 87102.

語言輔助通知。我們提供免費口譯服務，以幫助你與我們溝通。如果你需要幫助，你可以在我們部門的任何服務台請求口譯，服務台位於 Plaza Del Sol大樓，600 2nd Street NW，阿爾伯克基，NM 87102。

Thông báo về cách Tiếp cận Ngôn ngữ. Chúng tôi cung cấp các dịch vụ thông dịch miễn phí để giúp quý vị giao tiếp với chúng tôi. Nếu quý vị cần giúp đỡ, quý vị có thể yêu cầu thông dịch tại bất cứ quầy dịch vụ nào trong Sở của chúng tôi, tọa lạc tại tòa nhà Plaza Del Sol, 600 2nd Street NW, Albuquerque, NM 87102.

Saad Hadahwiis'a O'oolkaah bee dah na'astsooz. Nihi bik'inaaszil t'aadoo baahilinigoo 'ata' hashne' tse'esgizii ach'i' dzaadi! Dzaadi! Danihi dahootahgoo bee nihi-. Daa' danihi bidin nishli dzaadi! Dzaadi! Danihi bineesh'a yinishkeed 'ata' hashne' -di t'aa biholniihgoo tse'esgizii ket'aaz -di nihihgii dah diikaah, -k'eh -di tsin Plaza Del Sol Kiniit'aagoo, 600 2nd Kiniit'aa NW, Albuquerque, NM 87102.



Flores, Suzanna A. <Suzannaflores@cabq.gov>

to ryan@actionsecurityiron.com

**PLEASE NOTE:**

The neighborhood association contact information listed below is valid for 30 calendar days after today's date.

Dear Applicant:

Please find the neighborhood contact information listed below. Please make certain to read the information further down in this e-mail as it will help answer other questions you may have.

Association Name	Association Email	First Name	Last Name	Email	Address Line 1	City	State	Zip	Mobile Phone	Phone
Near North Valley NA	<a href="mailto:nearnorthvalleyna@gmail.com">nearnorthvalleyna@gmail.com</a>	Joe	Sabatini	<a href="mailto:jsabatini423@gmail.com">jsabatini423@gmail.com</a>	3514 6th Street NW	Albuquerque	NM	87107	5058507455	5053449212
Near North Valley NA	<a href="mailto:nearnorthvalleyna@gmail.com">nearnorthvalleyna@gmail.com</a>	Marit	Tully	<a href="mailto:nearnorthvalleyna@gmail.com">nearnorthvalleyna@gmail.com</a>	PO Box 6953	Albuquerque	NM	87197		5053857863
North Valley Coalition	<a href="mailto:nvcabq@gmail.com">nvcabq@gmail.com</a>	James	Salazar	<a href="mailto:jasalazarm@gmail.com">jasalazarm@gmail.com</a>	5025 Guadalupe Trail NW	Albuquerque	NM	87107	5054895040	
North Valley Coalition	<a href="mailto:nvcabq@gmail.com">nvcabq@gmail.com</a>	Peggy	Norton	<a href="mailto:peggynorton@yahoo.com">peggynorton@yahoo.com</a>	3810 11th Street NW	Albuquerque	NM	87107		5053459567

The ONC does not have any jurisdiction over any other aspect of your application beyond this neighborhood contact information. We can't answer questions about sign postings, permit status, site plans, buffers, or project plans, so we encourage you to contact the Planning Department at: 505-924-3857 Option #1, e-mail: [devhelp@cabq.gov](mailto:devhelp@cabq.gov), or visit: <https://www.cabq.gov/planning/online-planning-permitting-applications> with those types of questions.

Please note the following:

- You will need to e-mail each of the listed contacts and let them know that you are applying for an approval from the Planning Department for your project.
- Please use this online link to find the required forms you will need to submit your permit application. <https://www.cabq.gov/planning/urban-design-development/public-notice>.
- The Checklist you need for notifying neighborhood associations can be found here: <https://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance-1/public-notice>
- The Administrative Decision form you need for notifying neighborhood associations can be found here: <https://documents.cabq.gov/planning/online-forms/PublicNotice/Emailed-Notice-Administrative-Print&Fill.pdf>
- Once you have e-mailed the listed contacts in each neighborhood, you will need to attach a copy of those e-mails AND a copy of this e-mail from the ONC to your application and submit it to the Planning Department for approval.

If you have questions about what type of notification is required for your particular project or meetings that might be required, please click on the link below to see a table of different types of projects and what notification is required for each: <https://ido.abc-zone.com/integrated-development-ordinance-ido?document=1&outline-name=6-1%20Procedures%20Summary%20Table>

Thank you,

Suzie



**Suzie Flores**

Senior Administrative Assistant

Office of Neighborhood Coordination (ONC) | City Council Department | City of Albuquerque

(505) 768-3334 Office

E-mail: [suzannaflores@cabq.gov](mailto:suzannaflores@cabq.gov)

Website: [www.cabq.gov/neighborhoods](http://www.cabq.gov/neighborhoods)

From: [webmaster@cabq.gov](mailto:webmaster@cabq.gov) <[webmaster@cabq.gov](mailto:webmaster@cabq.gov)>

Sent: Monday, September 15, 2025 10:09 AM

To: Office of Neighborhood Coordination <[ryan@actionsecurityiron.com](mailto:ryan@actionsecurityiron.com)>

Cc: Office of Neighborhood Coordination <[onc@cabq.gov](mailto:onc@cabq.gov)>

Subject: Public Notice Inquiry Sheet Submission

Action Security Iron, Inc.  
204 Sin Nombre Ct. NE  
Albuquerque, NM 87113

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204 Sin Nombre Ct. NE  
Albuquerque, NM 87113

PIJ Properties

J.R. Doolittle 441

Masada Properties New Mexico LLC

Masada Ltd. CO

Beltran Armando + Fabiola + Beltran Carmen + Young Kevin S

Cordova Property Holdings LLC  
5118 T...

Garcia Pamela A. Custodian Steven Sanchez

Marcos Daniel R + Marsha

AFAAQ Investments LLC

Otero Gilbert

Bennett Yvonne D  
714 Towner Ave. NW  
87112-1037

Joera Porfirio H + Leticia

Mercat Market Place LLC + Renaissance Acquisitions LLC  
0201 M...

Chavez Miguel Murillo  
4220 Red Sun Dr. SE  
Albuquerque, NM 87110-9600



D) SITE PLAN



# City of Albuquerque



## Legend

- Bernalillo County Parcels
- Corrales
- Edgewood
- Los Ranchos
- Rio Rancho
- Tijeras
- UNINCORPORATED

General Notes

No.	Revision/Issue	Date

Firm Name and Address

Project Name and Address

## Notes

All Fencing and gates are fabricated @ 5'10" height.  
 Finished height after installation is 6'0". Height will not exceed 6'0"

Project	Sheet
Date	
Scale	

227 0 113 227 Feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
 11/18/2025 © City of Albuquerque

1:1,362

The City of Albuquerque ("City") provides the data on this website as a service to the public. The City makes no warranty, representation, or guaranty as to the content, accuracy, timeliness, or completeness of any of the data provided at this website. Please visit <http://www.cabq.gov/abq-data/abq-data-disclaimer-1> for more information.  
 THIS MAP IS NOT TO BE USED FOR NAVIGATION



## **Zoning Hearing Examiner Hearing**

### **MINUTES**

**December 16, 2025**

**Zoom Meeting**

#### **City Staff Present:**

Robert Lucero – Zoning Hearing Examiner

Leslie Naji – Acting ZHE Principal Planner, Planning Department

Adam Sena – ZHE Senior Planner, Planning Department

Misa Bloom – Planner, Planning Department

Nichole Maher – Acting ZHE Hearing Monitor

**ZHE - Robert Lucero: (41:27)** And that takes us next to Agenda Item 6, that is VA-2025-00154. Matthew Cunningham requests a variance to install a 5-foot 10-inch perimeter steel fence for Map 36, Tracks 36B1A and 36B2, Lots 3 through 6, Block 2, Towner Edition and the east 7 feet Vacation of the alley adjacent, and lots 7 and 8, Block 2 Towner Edition and west 7 feet, located at 2513 4th Street NW, which is zoned MX-M. We have the agent or applicant here today? Oh, there you are, sir, good morning. Oh, looks like you're on mute there. There should be a little mic.

**Matthew Cunningham:** (inaudible)

**ZHE - Robert Lucero:** Oh, there we go. There you go.

**Matthew Cunningham:** Thank you very much.

**ZHE - Robert Lucero:** You're welcome.

**Matthew Cunningham:** So, we're right off of 4th and Menaul.

**ZHE - Robert Lucero:** Let me get you sworn in, sir. Would you please state your full name and mailing address?

**Matthew Cunningham:** Matthew Cunningham, 2513 4th Street NW, Albuquerque, New Mexico, 87002.

**ZHE - Robert Lucero:** Thank you, sir. Please raise your right hand, and do you affirm under penalty of perjury that your testimony today will be true?

**Matthew Cunningham:** I do.

**ZHE - Robert Lucero:** Thank you, sir. Go ahead, please tell me about the variance request.

**Matthew Cunningham:** So, we're only allowed to put up a 3-foot fence, according to the codes, and we want to go to a 5'10-inch fence. It'll be ornamental wrought iron, and that's it.

**ZHE - Robert Lucero:** Okay. Let's see, and tell me about the site. Are there... are there... is there... one of the requirements for a variance is that there be special circumstances, you know, things that are unique or different about this site as compared to other sites in the vicinity, or the same zoning that would require the variance? Is there... is there something unique that is requiring a taller fence here?

**Matthew Cunningham:** So, we're on 4th and Menaul, just a little bit south, where the old Hi-Lo supermarket. And most of the buildings around us already have a taller fence than 3 feet, so it would kind of fit into the neighborhood, but we're having a lot of problems with the homeless, just like everybody else. A 3-foot fence just really wouldn't, wouldn't stop them at all.

**ZHE - Robert Lucero:** Okay. And, would there be any impact on existing infrastructure or transit improvements? I understand there's a bus stop there. Would this pose any problems for folks trying to get on and off the bus?

**Matthew Cunningham:** No, sir, it would not.

**ZHE - Robert Lucero:** Okay, I see there's like, a sort of a jog around the, that area, is that right?

**Matthew Cunningham:** Yes, sir.

**ZHE - Robert Lucero:** Okay. And then, bear with me just one second, I'm scrolling through the photos that you sent in. Did you receive any feedback to the notices that you posted and sent out?

**Matthew Cunningham:** No, sir.

**ZHE - Robert Lucero:** Okay. Alright. Anything else that you'd like to add before I call for public comment?

**Matthew Cunningham:** Nothing that I can think of. Thank you.

**ZHE - Robert Lucero:** You're welcome, sir. So, let's go ahead and see if there's any public comment, and then if there is, you'll have the chance to respond. So, for everyone here, this is Agenda Item 6, and it's a request to install a taller wall. It's actually a wrought iron fence at 2513 4th Street NW. Please raise your hand if you'd like to speak on that item. Scroll, let's see, I see Leslie Naji with her hand raised.

**Leslie Naji:** Yes, thank you, Mr. Lucero. I just, as a planner, with, not as a private citizen, I just wanted to ask if the applicant would consider setting... he has a, it's set back 30 feet for the gate, he has it set back a jog going around the benchmark. Our concern, as you will find frequently in our staff reports, is the effect to the community with having fences all up along the sidewalk, and if the applicant would consider pulling it back, we do have an allowance within the IDO for a 5-foot fence without a variance if it's set back 10 feet. It didn't look like there was parking that needed

to be utilized right along the property line, and if they would just set the fence back from the sidewalk, you know, that 10 feet, so that... the impact for the street and the pedestrians wouldn't be so harsh.

**ZHE - Robert Lucero:** Thank you, Ms. Najj. What do you think, Mr. Cunningham? Is that... would that be reasonable?

**Matthew Cunningham:** No, I don't... I think that'll take away, that's a whole car space. 10 feet wide by however long the front of the space is, that's a lot of space. We could come back some, but 10 feet's a long ways. How wide is the park, is the sidewalk over there? If the lady knows.

**ZHE - Robert Lucero:** Let's see, it's not apparent.

**Leslie Najj:** If you can just give me a minute, I'll see if I can get a rough idea of the sidewalk.

**ZHE - Robert Lucero:** Yeah. I know there is precedent for requiring a setback in that area over, I think it was a paint store near, on Menaul, kind of closer to 2nd Street, right around the corner. So, I think that she does raise a good point. That does help mitigate any negative impact or difficulty for pedestrian traffic.

**Matthew Cunningham:** I think it also gives the homeless more of an opportunity to camp there, which isn't a very fun ordeal for anybody.

**ZHE - Robert Lucero:** Yeah, yeah. What do you think would be a reasonable setback, in your view?

**Matthew Cunningham:** I would think 3 feet would be plenty. That's the normal width of a commercial door. Like I say, there's already a bus stop there that we're accounting for. The sidewalk is, is pretty wide for pedestrian thoroughfare. We're setting back off of the street for the gates so that any... any large trucks, like the trash pickup and stuff like that, has plenty of room to get off the street and not impact that. So, like I said, you know, 36 inches, 3 feet would probably be what we would be willing to do.

**ZHE - Robert Lucero:** And would the, is the entire fence view fencing, meaning that you can see through it? It's all... it's all wrought iron.

**Matthew Cunningham:** Yes, sir. It'd be similar to what's across the street, at the shopping center over there, the strip mall, right across the street from us. **(49:01)**

**ZHE - Robert Lucero:** Okay. Let's see, Ms. Naji, did you have anything else that you'd like to add?

**Leslie Naji:** Yes, I did measure the sidewalk, mind you, from Google Earth.

**ZHE - Robert Lucero:** Once you sworn in, since that's a factual, thing, if you'd just please, state your name and title with the city.

**Leslie Naji:** I'm Leslie Naji, Principal Planner for the City of Albuquerque.

**ZHE - Robert Lucero:** Thank you. Please raise your right hand, and do you affirm under penalty of perjury that your testimony today will be true?

**Leslie Naji:** I do.

**ZHE - Robert Lucero:** Thank you, go ahead.

**Leslie Naji:** I did roughly measure it by a Google Earth, so it looks like the sidewalk is about 6 feet, but the applicant is looking to set back the fence around the bus stop 5 feet. So, it seems it would make sense, because traffic parking isn't going to be able to access that anyway to continue that fence line at least the 5 feet. So, it's a straight line across the front of the property, set back, to 5 feet as is required. per their design.

**ZHE - Robert Lucero:** Thank you, Ms. Naji.

**Leslie Naji:** Thank you.

**ZHE - Robert Lucero:** Okay.

**Matthew Cunningham:** What is exactly the concern of wanting to set it back, 5 feet all the way across?

**Leslie Naji:** Well, the concern is, is one is that, so it's not so invasive onto the sidewalk, and in that sense that we're walking through a prison yard every time we walk down a street. The other is that, you're setting it back 5 feet to go around the bus stop, so you're not going to be having vehicular traffic there, you're not going to be parking there, because You don't have you already have this jog in it, so it would be beneficial to the streetscape, and the intent of the IDO to not be having high fences along the sidewalk, and the front property line, as well as, you're just doing a straight run rather than jogging around the bus stop.

**Matthew Cunningham:** Well, thank you for, for those to bring up those issues. First off, I take offense to it being looking like a prison. This is very nice ornamental iron, and nothing close to prison. You guys have already made us take down razor wire, which had been there way before we had purchased the property over 5 years ago, and we took all that down, and the very next day, someone hopped our fence, and got into our yard. I know that's just what we're dealing with every day. I would like to be able to use as much property for parking as possible. Obviously, there's gonna be, with the property, there's gonna be a retail portion of it, and just would like to be able to have as much parking as possible. So, I would like to know that we've already conceded the portion around the bus stop, and I just don't really want to add any more space for the homeless to gather around. I mean, if you've been in that area, it's hard on the business owners to deal with that on a daily basis.

**ZHE - Robert Lucero:** Thank you, Mr. Cunningham. Let's just see if there's anyone else that would like to make a public comment. I know I had called for it before. Let me just make sure that nobody else wants to, make public comments. Again, for everyone here, this is Agenda Item 6. If you, would like to comment on that item, please raise your hand. Last call for public comment on Agenda Item 6. Okay. Well, Mr. Cunningham, it doesn't appear that there's any further public comment. I appreciate the, robust discussion. that we just heard. I will take everything under consideration and issue a written decision in 15 days. Thank you, sir.

**Matthew Cunningham:** Thank you so much, Mr. Lucero. Thank you, Leslie.

**Leslie Naji:** Thank you.

**ZHE - Robert Lucero:** Have a good day. That concludes Agenda Item 6.



## NOTICE OF APPEAL

January 22, 2026

### TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on January 15, 2026. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal, please contact Nichole Maher, Planning Sr. Administrative Assistant, (505) 924-3845 or [nmaher@cabq.gov](mailto:nmaher@cabq.gov).

*Please refer to the enclosed excerpt from the Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have about this procedure.*

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Michelle Montoya, Clerk to the City Council, (505) 768-3100 or [mmmontoya@cabq.gov](mailto:mmmontoya@cabq.gov).

**CITY COUNCIL APPEAL NUMBER: AC-26-03**

**PLANNING DEPARTMENT CASE FILE NUMBER: [VA-2025-00154 \(ZHE – Variance\)](#),  
[VA-2026-00007 \(Appeal\)](#)**

**SUBJECT PROPERTY: 2513 4<sup>th</sup> St NW, Albuquerque, NM 87102**

**APPLICANT: Matthew Cunningham**  
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ZHE File



## AGENDA

### PUBLIC HEARING ZONING HEARING EXAMINER CITY OF ALBUQUERQUE

Notice is hereby given that the Zoning Hearing Examiner, Robert Lucero, Esq., City of Albuquerque, will hold a public hearing via <https://www.zoom.us/> on Tuesday, December 16, 2025 beginning at 9:00 a.m.

Join Zoom Meeting

<https://cabq.zoom.us/j/9756087372>

**Meeting ID: 975 608 7372**

Attend by Phone

+1 (719) 359-4580

Meeting ID: 975 608 7372

Find your local number: <https://cabq.zoom.us/u/kenSZgLotx>

Please contact City Planning staff via the information below for any of the following:

- To request details about the cases below.
- At least 72 hours prior to the hearing:
  - For individuals with disabilities to request special assistance to participate at the public hearing.
  - To request interpretation into other languages at the hearing.

#### Contact Information

- Email: [PlanningZHE@cabq.gov](mailto:PlanningZHE@cabq.gov)
- Phone: 505-924-3860, option for Boards and Commissions, or TTY 711

To submit written comments on any of the cases below, please submit by 5 PM on Wednesday, November 12, 2025.

- Mail: Robert Lucero, Esq., Zoning Hearing Examiner, c/o ZHE Administrative Assistant, Planning Department, P.O. Box 1293, Albuquerque, NM, 87103
- Email: [PlanningZHE@cabq.gov](mailto:PlanningZHE@cabq.gov)
- Online: Visit <https://cabq.gov/zhe-public-comment> to submit a comment about a case online.

The following items will be considered:

<b><u>INTERPRETER NEEDED:</u></b>			
1.	CU-2025-00034	PR-2025-020134  <b>APPROVAL</b>	Barbara Goddard and Maria Molinar De Bailon request a Conditional Use for a Family Home Day Care for Lot 5, 6, Unit No. 7A, Jade Park Mobile Home Subdivision, located at 6816 Elona Drive NE, zoned PD (D-18) (IDO Section 14-16-4-2, Table 4-2-1; 14-16-4-3(F)(8))
<b><u>OLD BUSINESS:</u></b>			
2.	VA-2025-00142	PR-2025-020105  <b>APPROVAL</b>	Joseph Martarese & Sarah Bernhard (Agent: Kevin Evans, Annex General Construction) requests a Variance of 2 ft to the 6 ft requirement for a front courtyard wall, for Lot 24, Block 38, University Heights Addition, located at 301 Bryn Mawr Drive SE, zoned R-1C (IDO Section 14-16-5-7(D)(3), Table 5-7-2)
3.	VA-2025-00143	  <b>APPROVAL</b>	Jamie Leigh & Shane Robert Meihaus requests a Variance of 10 Ft to the required 15 Ft side yard setback in the Character Protection Overlay Zone-13 for Lot 5-A & 5-B, Block 6, Unit 18, Cliffs Subdivision located at 6612 Kimmick Drive NW, zoned R-1D (IDO Section 14-16-3-4(N)(3))
4.	MZP-2025-00026 VA-2025-00172	PR-2025-020150  <b>APPROVAL</b> <b>APPROVAL</b>	Salena Vela requests a Carport Permit and a Variance of 1 foot to the 3-foot front setback requirement for Lot 19, Block 29, Inez Addition, located at 8007 Indian School Road NE, zoned R-1C (H-19) (IDO Section 14-16-5-5(F)(2)(a)(3)(c))
<b><u>NEW BUSINESS:</u></b>			
5.	CU-2025-00038	PR-2025-020152  <b>APPROVAL</b>	6401 Uptown, LLC and Tim Wright – Nusenda Credit Union (Joe Slagle, Architect – Agent) request a Conditional Use for a Drive-through or drive-up facility for Tract B-1-A-1 Plat of Tracts A-2-B-1-A & B-1-A-1 Dale K Bellamah’s Jenedale Unit 5, located at 6401 Uptown Boulevard NE, zoned MX-H (H-18) (IDO Section 14-16-4-2, Table 4-2-1; 14-4-3(F)(5))

6.	VA-2025-00154	<b>DENIAL</b>	Matthew Cunningham requests a Variance to install a 5 foot 10 inch perimeter steel fence for Map 36, Tracts 36B1A & 36B2, Lots 3 thru 6, Block 2 Towner Addition & East 7 feet Vacation Alley Adjacent and Lots 7 & 8 Block 2 Towner Addition and West 7 Feet, located at 2513 4th Street NW, zoned MX-M, NR-C (H-14) (IDO Section 14-16-6-6(O))
7.	VA-2025-00161	<b>DEFERRAL</b>	Slavin Family, LLC (Augustine Grace, Ace Engineering – Agent) requests a Variance for a courtyard wall height variance of 6 inches to the required 3-foot wall maximum for Lot 8, Block 3, Buena Vista Heights, located at 2128 Silver Avenue SE, zoned MX-T (K-15) (IDO Section 14-16-5-7(D)(3); Table 5-7-2)
8.	VA-2025-00162	<b>DENIAL</b>	Fidel Chacon and Dalila Solis request a Variance of 3 feet to the 3-foot wall height maximum on the front property line for Lot 25-A-1, Block 9, Plat of Lot 25-A-1 Block 9 Mesa Verde Addition, located at 237 Wyoming Boulevard NE, zoned MX-M (K-19) (IDO Section 14-16-5-7(D); Table 5-7-1).
9.	VA-2025-00165	PR-2025-020145 <b>APPROVAL</b>	City of Albuquerque and Raphael Martinez, N4Arts, request for a Variance of 10 feet to the 10-foot front setback requirement for a wrought iron view fence for MRGCS Map 32 Tract 147A1B & 147A2, located at 4904 4TH ST NW, zoned MX-M (F-14) (IDO Section 14-16-5-7(D)(3)(c)1)
10.	VA-2025-00166	PR-2025-020151 <b>DEFERRAL</b>	Rio Grande Realty & Investment, LLC (Todd Kruger, Elevated Mechanical Services – Agent) requests a variance of 15 feet to the 25-foot rear setback requirement to construct a single-car garage addition for Lot 1 Plat of Lots 1, 2 & 3 Lands of Frances & Theresa, located at 3741 San Isidro Street NW, zoned R-A (G-13) (IDO Section 14-16-5-1; Table 5-1-1)