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

Mariano Jr. & Julia Padilla (Agent Adella Gallegos, AG Services) requests a 2 ft variance to 3ft wall height for Lot 1, 2, 3, 4, 5, VAC ORD 79-1967, Block 3A, Lot E, F, G, H, I, J, K, Block 1, Palisades Addn, Lot 53, Town of Atrisco Grant Airport Unit Replat, located at 5501 Bluewater Rd NW, zoned MX-L [IDO Section 14-16-5-7(D)(1) Table 5-7-1]

Special Exception No:	**VA-2025-00037**
Project No:	**NONE**
Hearing Date:	07-15-25
Closing of Public Record:	07-30-25
Date of Decision:	07-30-25

On July 15, 2025, Adella Gallegos, AG Services ("**Agent**") as agent for Mariano Jr. and Julia Padilla ("**Applicant**") was scheduled to appear before the Zoning Hearing Examiner (the "**ZHE**") requesting a Variance of 2' to the allowed 3' wall height ("**Application**") upon the real property located at 5501 Bluewater Rd NW (the "**Subject Property**"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a Variance of 2' to the allowed 3' wall height, 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. The Planning Director's delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
4. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).
5. Applicant 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).
6. Applicant 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).
7. Applicant posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).
8. The Subject Property is located in the MX-L zone district, which mandates a 3-foot maximum wall height for walls in the front yard or street side yard.
9. Therefore, a 5-foot high wall in the front yard or street side yard would require ZHE approval of a Variance of 2 feet to the maximum wall height on the Subject Property pursuant to IDO Subsection 14-16-6-6(O).
10. 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."*

11. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
12. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
13. Agent and Applicant appeared at the ZHE hearing on the Application and gave evidence in support of the Application.
14. Applicant argues that special circumstances apply 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. Applicant's justification letter states that "[w]ith approval of the 2 ft. height variance, the existing fencing prevents this site from becoming a heaven for illegal dumping and transients to occupy and loiter; and, thereby creating an unsafe and unsightly condition for the public walking to and from the public Pat Hurley park." While the ZHE can certainly empathize with problems of illegal dumping and trespassing, Applicant does not establish how such dumping and trespassing are unique problems to the Subject Property, as opposed to other properties in the vicinity, to as to constitute a special circumstance under the IDO. Applicant alleges that the lot is uniquely located near a public park and is undeveloped; however, based on aerial photos in the record, it appears there are other undeveloped lots in the vicinity of relatively comparable size.
15. Also, even were special circumstances to apply, Applicant did not demonstrate how 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 how practical difficulties result from strict compliance with the minimum standards, as required by Section 14-16-6-6(O)(3)(a)(1). For instance, it is not clear from evidence in the record why Applicant could not have constructed 5-foot high view fencing conforming to the requirements of IDO Section 14-16-5-7(D)(3)(c), as would be permissive in the MX-L zone, rather than their current wall.

16. Reviewing the record as a whole, Applicant has failed to provide a sound justification, based on substantial evidence, of compliance with IDO Section 14-16-6-6(O)(3)(a)(1).
17. Because all subsection of IDO Section 14-16-6-6(O)(3)(a) must be satisfied, and Applicant failed to satisfy Subsection 14-16-6-6(O)(3)(a)(1), the Application must be denied.

DECISION:

DENIAL of a Variance of 2' to the allowed 3' wall height.

APPEAL:

If you wish to appeal this decision, you must do so by August 14, 2025 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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc: ZHE File
Zoning Enforcement
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