



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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ZHE File  
Zoning Enforcement