



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

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)

Special Exception No: .... **VA-2025-00165**  
Project No: ..... **PR-2025-020145**  
Hearing Date:..... 12-16-2025  
Closing of Public Record: 12-16-2025  
Date of Decision: ..... 12-31-2025

On December 16, 2025, the City of Albuquerque and Raphael Martinez (“**Applicant**”) were scheduled to appear before the Zoning Hearing Examiner (the “**ZHE**”) requesting a Variance of 10 feet to the 10-foot front setback requirement for a wrought iron view fence t (“**Application**”) upon the real property located at 4904 4<sup>th</sup> Street NW (the “**Subject Property**”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a Variance of 10 feet to the 10-foot front setback requirement for a wrought iron view 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 has not 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) were delivered.
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 a 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 at 4904 4<sup>th</sup> Street NW in a MX-M zone district.

13. Therefore, a Variance of 10 feet to the 10-foot front setback requirement for a wrought iron view fence on the Subject Property 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.*
  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.”*
15. 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).
16. 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).
17. Applicant appeared at the December 16, 2025 ZHE hearing on the Application and gave evidence in support of the Application.
18. Based on evidence submitted by or on behalf of Applicant, it appears that there are 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 cites trespassing by unhoused persons and drug users onto the Subject Property, which activity appears to exist as well on other properties in the vicinity. This by itself does not arise to the level of a special circumstance. However, a public art installation is located on the Subject Property along the 4<sup>th</sup> Street sidewalk. Applicant testified that the public art features wall installations which provide shelter and hiding places for trespassers and vandals. This public art was not installed by Applicant and predates Applicant’s occupancy of the property; therefore, the conditions created by the public art cannot said to be self-imposed. Although there is public art further north along 4<sup>th</sup> and Montañó, it does not feature the same design or provide shelter or hiding places in the same way. Therefore, the Subject Property is uniquely impacted by these special circumstances, which create an undue hardship and justify the variance requested.

19. Based on evidence submitted by or on behalf of Applicant, the Variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(O)(3)(a)(2). The fencing proposed is view fencing that provides for “eyes on the street” and will allow 24-hour viewing of the public art, while promoting safety and security. The City of Albuquerque Public Art Urban Enhancement Division Manager submitted a letter to the ZHE wholeheartedly supporting the Application as an appropriate way to protect the public art while maintaining the public’s ability to enjoy it.
20. Based on evidence submitted by or on behalf of Applicant, the Variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(O)(3)(a)(3). The proposed fencing is to be located entirely on the subject property and gates will have emergence overrides.
21. Based on evidence submitted by or on behalf of Applicant, the Variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(O)(3)(a)(4). While the placement of the fence directly on the property line at the sidewalk does not encourage walkability, there is no other practical place to place the fence, given the location of the public art. On balance, evidence shows that the variance will not undermine the intent or purpose of the IDO or zone district.
22. Based on evidence submitted by or on behalf of Applicant, the Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Any smaller variance would be impracticable to provide the security necessary to protect the public art and the Subject Property.
23. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a Variance of 10 feet to the 10-foot front setback requirement for a wrought iron view fence.

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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Zoning Hearing Examiner

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