



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

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)

Special Exception No: **VA-2025-00161**
Project No:
Hearing Date:..... 01-20-2026
Closing of Public Record: 01-20-2026
Date of Decision: 02-04-2026

On January 20, 2026, Augustine Grace (“**Applicant**”) was scheduled to appear before the Zoning Hearing Examiner (the “**ZHE**”) requesting a Variance for a courtyard wall height of 6 inches to the required 3-foot wall maximum (“**Application**”) upon the real property located at 2128 Silver Ave SE (the “**Subject Property**”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Agenda notice states that Applicant is requesting a Variance for a courtyard wall height of 6 inches to the required 3-foot wall maximum, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“**IDO**”) Section 14-16-6-6(O).
2. However, based on evidence in the record and sworn testimony of Applicant at the ZHE hearing, Applicant requests to construct a courtyard wall consisting of 3.5-foot CMU wall with a 2.5-foot view fence above, resulting in an overall height of 6 feet.
3. Applicant has authority to pursue this Application, pursuant to 14-16-6-4(D).
4. Applicant has not duly authorized Agent to act on Applicant’s behalf regarding the Application.
5. 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).
6. The Planning Director’s delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
7. The analyses and studies listed in IDO Section 14-16-6-4(H) were delivered.
8. The Application was forwarded to commenting agencies pursuant to IDO Section 14-16-6-4(I).
9. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).
10. 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).

11. 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).
12. Applicant has posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).
13. The Subject Property is located at 2128 Silver Ave SE in a MX-M zone district.
14. Therefore, a Variance to wall height for a setback more than 10 feet from the front of the property line for a courtyard wall-major to the Subject Property requires a Variance Approval pursuant to IDO Subsection 14-16-6-6(O).
15. 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.”*
16. 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).
17. 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).
18. Applicant appeared at the ZHE hearing on the Application and gave evidence in support of the Application.
19. 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). The Subject Property is located immediately adjacent to a newly constructed multifamily apartment, which creates the need for greater security and privacy provided by the requested wall. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use of the Subject Property.
20. 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 promote safety and security. On December 2, 2024, the Landmarks Commission Staff approved Project # PR-2024-011255/SI-2024-01663, for a Certificate of Appropriateness for the requested wall.

21. 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 blocks no views or otherwise impacts surrounding properties or infrastructure improvements in the vicinity.
22. 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). Evidence shows that the variance will not undermine the intent or purpose of the IDO or zone district.
23. 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 provide security and reasonable enjoyment of the Subject Property.
24. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a Variance to allow a courtyard wall consisting of 3.5-foot CMU wall with a 2.5-foot view fence above, resulting in an overall height of 6 feet.

APPEAL:

If you wish to appeal this decision, you must do so by February 19, 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.



Robert Lucero, Esq.

Zoning Hearing Examiner

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ZHE File
Zoning Enforcement