

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
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ZONING HEARING EXAMINER NOTICE OF DECISION

Special Exception Number: VA-2026-00096

Project Number: PR-2022-007961

Hearing Date: 07-21-26

Closing of Public Record: 07-21-26

Date of Decision: 08-05-26

Case Description: Scott Davies (Owner) and Jimmy Bates (Applicant) request a Variance of 5 feet to the required 5-foot setback for a Wall/Fence in an MX zone district for Lots 28 & 29, Blocks 28 & 29, Virginia Place Addition, located at 5303 Gibson Blvd SE, zoned MX-M (L-18) IDO § 14-16-5-7(D)(3)(c).

On July 21, 2026, Scott Davies (“Applicant”) Jimmy Bates (“Owner”) was scheduled to appear before the Zoning Hearing Examiner (“ZHE”) requesting a Variance of 5 feet to the required 5-foot setback for a Wall/Fence (“Application”) upon the real property located at 5303 Gibson Blvd SE. (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS, VARIANCE TO WALL/FENCE SETBACK:

1. Applicant is requesting a Variance of 5 feet to the required 5-foot setback for a Wall/Fence on the property pursuant to the 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 an 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, 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 5303 Gibson Blvd SE in an MX-M zone district.
13. A wall/fence in a mixed-use zone can obtain a height of 5 feet if the requirements of IDO § 14-16-5-7(D)(3)(c) are met.
14. The requirements of IDO § 14-16-5-7(D)(3)(c) are not met.
15. Therefore, a wall or fence on the Subject Property requires a Variance pursuant to IDO Subsection 14-16-6-6(O)(3).
16. 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.”
17. 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).
18. 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).
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, and 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, as required by Section 14-16-6-6(O)(3)(a)(1). The location of the subject property and pre-existing improvements create increased visibility, lack of privacy and risk of trespass and security risks, which constitute special circumstances that create practical difficulties that would result from strict compliance with the minimum standards.

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 fence design is attractive and in line with the architectural character of the neighborhood.
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 wall provides for security and views without causing adverse impacts.
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). Applicant testified the proposed wall will be built and maintained in compliance with all IDO requirements.
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).
24. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a Variance of 5 feet to the required 5-foot setback for a Wall/Fence of the property for Lots 28 & 29, Blocks 28 & 29, Virginia Place Addition, located at 5303 Gibson Blvd SE.

APPEAL:

If you wish to appeal this decision, you must do so by August 20, 2026. Pursuant to IDO § 14-16-6-4-(U), you must demonstrate that you have legal standing to file an appeal.

PERIOD OF VALIDITY:

Approval of a Variance is valid for one (1) year from date of approval.

OTHER REQUIREMENTS:

THIS NOTICE OF DECISION DOES NOT CONSTITUTE APPROVAL OF PLANS FOR A
BUILDING PERMIT.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. If your Application is approved, submit this Notice of Decision when you apply for any related building permit or other necessary permit.



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ZHE File
Zoning Enforcement