

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
600 2nd Street NW, 2nd Floor, Albuquerque, NM 87102
PO Box 1293, Albuquerque, NM 87103
Office (505) 924-3860



ZONING HEARING EXAMINER NOTICE OF DECISION

Special Exception Number: VA-2026-00098

Project Number: None

Hearing Date: 08-18-26

Closing of Public Record: 08-18-26

Date of Decision: 09-02-26

Case Description: Curtis Witham (“Applicant”) (“Owner”) requests a Variance of 5 feet to the required 5-foot setback to allow a 6-foot-high fence to be built in the front of the property for TR 5A2-A1-4 PLAT OF TRS 5A2-A1-1, 5A2-A1-2, 5A2-A1-3, 5A2-A1-4 AND 5A2-A1-5 VOLCANO BUSINESS PARK PHASE II CONT. .7690 AC, located at 3031 Painted Rock Dr NW, zoned NR-BP (G-10) IDO β 14-16-5-7(D)(3)(d) Table 5-7-1

On August 18, 2026, Curtis Witham (“Applicant”) (“Owner”) was scheduled to appear before the Zoning Hearing Examiner (the “ZHE”) requesting a Variance of 5 feet to the required 5-foot setback (“Application”) upon the real property located at 3031 Painted Rock Dr NW (the “Subject Property”). Below are the ZHE’s findings of fact and decision.

FINDINGS, VARIANCE TO MINIMUM WALL/FENCE SETBACK:

1. Applicant is requesting a Variance of 5 feet to the required 5-foot setback to allow a 6-foot-high fence to be built in the front of the property, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“IDO”) § 14-16-6-6(O).
2. Applicant has authority to pursue this Application, pursuant to IDO § 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 at least 1 meeting to Indian Nations, Tribes, and Pueblos no more than 1 calendar year before filing the application, pursuant to IDO § 14-16-6-4(B).

5. The Planning Director's delegee has determined that the Application is complete, pursuant to IDO § 14-16-6-4(G).
6. The analyses and studies listed in IDO § 14-16-6-4(H) are not required.
7. The Application was referred to commenting agencies pursuant to IDO § 14-16-6-4(I).
8. The content of the notice of the Application satisfies IDO § 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 Neighborhood Associations within 660 feet as required by IDO § 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 § 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO § 14-16-6-4(J)(4).
12. The Subject Property is located in the NR-BP zone district, which requires a 5-foot setback to allow a 6-foot-high fence to be built in the front of the property. Pursuant to IDO Table 14-16-5-7(D)(3)(d), Table 5-7-1.
13. The application does not meet the setback requirement for a 6-foot-high, opaque wall/fence t on the front property line.
14. Therefore, a Variance request of 5 feet to the required 5-foot setback to allow a 6-foot-high fence in the front of the Subject Property requires a Variance – ZHE pursuant to IDO § 14-16-6-6(O).
15. IDO § 14-16-6-6(O)(3)(a) (Review and Decision Criteria) 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 § 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 § 14-16-6-4(E)(4).
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, 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 pre-existing conditions of the Subject Property create special circumstances under which practical difficulties result from strict compliance with the minimum standards.

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). No safety, health or welfare concerns are implicated in the record without sufficient mitigation.
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 variance requested does not impose upon neighboring properties.
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). The development of the property is consistent with the IDO and the Application merely seeks to rectify a variance situation.
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). Applicant requests only the minimum required to accommodate the development of the Subject Property.

DECISION:

APPROVAL of a Variance of 5 feet to the required 5-foot front yard setback for a 6-foot tall Wall/Fence for TR 5A2-A1-4 PLAT OF TRS 5A2-A1-1, 5A2-A1-2, 5A2-A1-3, 5A2-A1-4 AND 5A2-A1-5 VOLCANO BUSINESS PARK PHASE II CONT .7690 AC, located at 3031 Painted Rock Dr NW.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc: ("Owner") ("Applicant") Curtis Witham
cdwitham@msn.com
3031 Painted Rock Dr NW, Albuquerque, NM 87120
8248 Meadowbrook Ave NW Albuquerque, NM 87120

ZHE File
Zoning Enforcement