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-2026-00134

Project Number: PR-2026-000165

Hearing Date: 10-20-2026

Closing of Public Record: 10-20-2026

Date of Decision: 11-04-2026

Case Description: Annahi Batista Garcia ("**Owner**") requests a Variance to Height/Opacity for Lot 22, Block A, Blake Road Mobile Home, located at 4301 Rudy Rd SW, zoned R-MC (N-10)
IDO β 14-16-5-7 (D)(1)

On October 20, 2026, Annahi Batista Garcia ("**Owner**") was scheduled to appear before the Zoning Hearing Examiner ("**ZHE**") requesting a Variance to the opacity requirement for fencing above the allowed 3-foot Wall/Fence height on the front, side yard setback of the property for an existing 5-foot CMU block wall. ("**Application**") upon the real property located at 4301 Rudy Rd SW ("**Subject Property**"). Below are the ZHE's findings of fact and decision.

FINDINGS, VARIANCE TO OPAQUE FENCING:

1. Applicant is requesting a Variance to the 50-percent opacity requirement for view fencing above the allowed 3-foot Wall/Fence height in the front and side setback of the property for an existing 5-foot CMU Wall/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. The Planning Director's delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
4. The Application was forwarded to commenting agencies pursuant to IDO § 14-16-6-4(I).
5. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).

6. 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).
7. 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).
8. Applicant has posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).
9. The Subject Property is located at 4301 Rudy Rd SW in the R-MC zone district.
10. For low-density residential development, IDO § 14-16-5-7(D)(3)(a)2 allows a 5-foot wall less than 10 feet from the property line if a Permit – Wall or Fence – Major is approved and view fencing is used for the portion of the wall above 3 feet. The existing 5-foot-tall wall/fence on the subject property fails to comply with the exceptions to the maximum wall height in Table 5-7-2, because the existing wall/fence is solid rather than visual transparency of no more than 50% opacity.
11. Therefore, this application requires a Variance - ZHE approval pursuant to IDO §14-16-6-6(O).
12. *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."*

13. 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).
14. 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).
15. In order to be approved, the Application must also meet the general review and decision criteria in IDO Subsection 14-16-6-4(M).
16. Applicant appeared at the October 20, 2026 ZHE hearing on the Application and gave evidence in support of the Application.

17. Based on evidence in the record, it appears that there are no 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 IDO § 14-16-6-6(O)(3)(a)(1). Applicant argues that the Subject Property is located on a cul-de-sac, but there are many other properties on the same cul-de-sac and within the vicinity. Applicant also argues that the Subject Property has little side yard and there is therefore an increased need for privacy, but review of the aerial photos in the record reveals that the side yard is similar to most properties in the vicinity. No special circumstance has been established by substantial evidence.
18. Because all requirements of the variance test must be met, and the Application fails to meet the requirement of special circumstances, the Application must be denied.

DECISION:

DENIAL of PR-2026-000165, VA-2026-00134 of a Variance for view fencing above the allowed 3-foot Wall/Fence height in the front and side setback of the property for Lot 22, Block A, Blake Road Mobile Home, located at 4301 Rudy Rd SW.

APPEAL:

If you wish to appeal this decision, you must do so by November 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

cc: ("Applicant") Annahi Batista Garcia

4301Rudyrd@gmail.com

ZHE File
Zoning Enforcement