

**BEFORE THE CITY OF ALBUQUERQUE  
LAND USE HEARING OFFICER**

**APPEAL NO. AC-26-02**  
**VA-2025-00162**

**DALILA SOLIS, Appellant.**

**PROPOSED DISPOSITION TO CITY COUNCIL**

INTRODUCTION & BACKGROUND  
STANDARD OF REVIEW  
DISCUSSION  
PROPOSED FINDINGS

**I. INTRODUCTION & BACKGROUND**

In this appeal, the Zoning Hearing Examiner (ZHE) denied an application for a 3-foot variance to the height of a proposed front and side yard fence on a .065 acre lot that faces Wyoming Boulevard [R. 022]. The Appellant, Dalila Solis filed a timely appeal. Ms. Solis is also the variance applicant [R. 011]. As shown below, I respectfully suggest that the City Council deny the appeal because it is essentially groundless under the IDO.

The address of the lot is 237 Wyoming Blvd, NE, is zoned MX-M for moderate intensity mixed uses and is currently being utilized for a restaurant use [R. 034]. The Appellant failed to appear at the scheduled appeal hearing on March 11, 2026. The record demonstrates that on February 23, 2026, the Appellant was sent notice of the March 11, 2026, appeal hearing to the email address listed in the application. The notice of hearing included a telephone

20 number and an email address to contact Council Staff. At no time prior to the appeal hearing  
21 did the Appellant call or communicate with Staff to notify them that she could not appear at  
22 the hearing. In the event that Appellant was merely delayed, and after waiting an additional 15  
23 minutes after the scheduled start-time of the hearing, a hearing was held in Appellant's  
24 absence.<sup>1</sup>

25 The record shows that the Appellant seeks to install a 6-foot tall fence along the front  
26 and side boundaries of the lot for the purpose of deterring crime [R. 021]. Under the Integrated  
27 Development Ordinance (IDO), maximum *front* yard wall height is limited to 3 feet in any  
28 mixed use zone, including in a MX-M zone district.<sup>2</sup> See IDO, Table 5-7-1. If, however, a  
29 front yard fence is set back 10 feet from the lot line, and the fence incorporates view fencing  
30 and landscaping elements, a front yard fence can be constructed to height of 5-feet without a  
31 variance. See IDO, § 5-7(D)(3)(c). The record indicates that the Appellant declined to meet  
32 the setbacks for a taller front yard fence under § 5-7(D)(3)(c) [R. 048-049]. Instead, she sought  
33 the variance.

34 Next, the record demonstrates that the Appellant submitted the variance application on  
35 September 5, 2025 [R. 021]. In the application, Appellant ignored the variance criteria in the  
36 IDO and instead justified the request with an argument about crime in the area that included  
37 an incident of vandalism at the restaurant use on the lot [R. 021]. The ZHE held a public quasi-

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1. The appeal hearing was delayed for the purpose of allowing additional time for Appellant's attendance. During the delay, Staff with the Office of the City Council attempted to call the Appellant. Staff were unable to contact the Appellant, but voicemail telephone messages were left with the Appellant about her whereabouts and failure to attend the hearing. As of this date, the Appellant has not contacted Council Staff.

2. Although front yard fence height is limited to 3 feet in height, *side* yard wall height can be 8 feet in any mixed use zone district. Table 5-7-1.

38 judicial hearing on Appellants application on December 16, 2025 [R. 047].

39 At the ZHE's hearing, the ZHE inquired about the IDO's variance criteria, but the  
40 Appellant was inattentive to what is required for a variance under the IDO. Appellant instead  
41 argued that she wanted a 6-foot tall fence to prevent crime [R. 048-050]. The ZHE then  
42 inquired about the exception to the 3-foot height limit; asking about whether Appellant would  
43 meet the 10-foot setback for a 5-foot tall front yard fence [R. 049]. Without evidence, the  
44 Appellant claimed that she believed there is inadequate space to setback the fence and made it  
45 clear to the ZHE that she wanted a 6-foot tall fence without setbacks [R. 049].

46 On December 12, 2025, the ZHE issued a written decision denying the variance [R.  
47 004]. Materially, the ZHE found that the Appellant failed to meet any of the applicable  
48 provisions in the IDO for a variance [R. 005]. Specifically, the ZHE concluded that Appellant  
49 did not demonstrate with any particularity how the problem of crime is a special circumstance  
50 applicable only to Appellant's lot [R. 005, Fndg. 18]. The ZHE further concluded that no  
51 evidence was presented to support that crime is not otherwise applicable to similarly situated  
52 lots in the area as required by the first prong of the five part variance test in the IDO [R. 005,  
53 Fndg. 18].

54

## 55 II. STANDARD OF REVIEW

56 A review of an appeal under the IDO is a whole record review to determine whether  
57 the ZHE's decision denying the Appellant's variance application was fraudulent, arbitrary, or  
58 capricious under the IDO; or whether the decision is not supported by substantial evidence; or  
59 if in denying the application, the ZHE erred in the facts, or in applying the requirements of the

60 IDO regulations. See IDO, § 6-4(U)(3)(d). The Land Use Hearing Officer (LUHO) is an  
61 independent hearing officer and has been delegated the authority by the City Council to hold  
62 quasi-judicial appeal hearings regarding appeals under the IDO, make findings, and to propose  
63 a disposition of appeals, including whether the decision appealed should be affirmed, reversed,  
64 or otherwise modified to bring the decision into compliance with the standards and criteria of  
65 the IDO. See, IDO, § 14-16-6-4(U)(3)(d).

66

### 67 **III. DISCUSSION**

68 After reviewing the record of this appeal as well as the applicable IDO provisions, I  
69 find that the ZHE's decision is well supported with substantial evidence. I further find that  
70 the ZHE's legal and factual conclusions under the framework of the Integrated Development  
71 Ordinance (IDO) are also well-supported; the ZHE did not err under the IDO in denying the  
72 variance application.

73 The variance criteria of the IDO are not subjective in nature; the five prong test for a  
74 variance requires objective evidence to support a variance. The Appellant failed to support the  
75 application with any *applicable* objective evidence from which the ZHE could approve the  
76 variance under the IDO. Furthermore, the evidence in the record shows that the Appellant  
77 made no attempt in the application or at the ZHE's hearing to meet her burden of proof under  
78 the IDO for the variance. Said another way, the Appellant failed to minimally support the  
79 application with any objective evidence for the variance as required in IDO, § 6-6(O)(3)(a).

80 A variance is an exception from the strict, literal application of the IDO's dimensional  
81 standards. See IDO, § 14-16-7, definition of a variance. Although a variance is intended to

82 allow for flexibility in the IDO, applicants must still qualify for it by satisfying the five prong  
83 criteria of IDO, § 6-6(O)(3)(a). Notably the five prong requirements, as they are written, are  
84 conjunctive; all the criteria or prongs must be satisfied by an applicant.<sup>3</sup> Briefly stated, under  
85 the first prong of the analysis, an applicant must demonstrate that there are "special  
86 circumstances" applicable to the lot which do not generally apply to other similarly situated  
87 lots in the area. IDO, § 6-6(O)(3)(a)(1).

88 ZHE expressly found that under the first prong, that Appellant could not demonstrate  
89 crime and vandalism (Appellant's justification for the variance) are conditions that are "*not*  
90 *unique to the subject property but instead are suffered generally by the entire vicinity*" [**R.**  
91 **005**]. The ZHE went on describing how crime and vandalism alone do not satisfy the first  
92 prong of the variance test and for that reason, the variance request had to be denied.

93 In the written appeal of the ZHE's decision, Appellant argues that because there are  
94 other similar fences that are 6 feet in height on other business properties along Wyoming Blvd.,  
95 the ZHE should have approved the application [**R. 007**]. However, Appellant failed to show  
96 if the taller fences on other properties were approved under the existing IDO or under the  
97 former Comprehensive Zoning Code which was replaced in 2018 with the current IDO, as  
98 amended.<sup>4</sup> I take notice that many businesses along Wyoming Blvd. preexist the IDO's 2018  
99 enactment. That is, many taller fences were approved well before the IDO was enacted.

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3. In this matter, the ZHE concluded that because the Appellants could not satisfy the first prong requirements, there was no need to evaluate whether the Appellant could satisfy the other four prongs [**R. 005, Fndg. 19**].

4. Notably under the former Comprehensive Zoning Code, front yard fence height on non-residentially zoned lots had no limits.

100 Therefore, without sufficient context or evidence to support Appellant's broad claim,  
101 Appellant's argument cannot withstand scrutiny and must fail.

102 Moreover, as in the application, in the appeal, the Appellant failed to make any attempt  
103 to show how the proposed fence would meet all five prongs under the variance criteria of IDO,  
104 § 6-6(O)(3)(a). The Appellant also failed to explain why the proposed taller front yard fence  
105 cannot meet the setback or landscaping requirements for a 5-foot tall fence under IDO, § 5-  
106 7(D)(3)(c) without a variance.<sup>5</sup> Thus, there is no meaningful evidence to support that the  
107 variance is minimally necessary under the first and the fifth prongs of the variance criteria. See  
108 IDO, § 6-6(O)(3)(a)1 and 5.

109 Finally, without minimal evidence to support the variance, and under the circumstances  
110 in this appeal, I find that under the fourth prong of the variance criteria in § 6-6(O)(3)(a)4,  
111 approving the application for the variance would "*materially undermine the intent and purpose*  
112 *of [the] IDO.*" Thus, the ZHE could have denied the application on any of the above grounds  
113 as well as on the first prong of the variance criteria. Accordingly, the ZHE did not err in  
114 denying the application.

115

## 116 **V. PROPOSED FINDINGS**

117 Below are proposed finding I respectfully recommend that the City Council adopt.  
118 Each finding is supported by substantial evidence in the record as indicated above.

119 1. The Appellant filed a timely appeal under the IDO.

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5. As indicated above, under IDO, § 5-7(D)(3)(c), a taller fence can be approved with appropriate setbacks, view fencing, and landscaping. The Appellant's disregard or inattention to the requirements of § 5-7(D)(3)(c) is evidence under the first prong of § 6-6(O)(3)(a)1 that Appellant cannot also satisfy the "practical difficulties" or "extraordinary hardship" parts of § 6-6(O)(3)(a)1.

120           2. Because the Appellant is also the original applicant for the variance, the  
121 Appellant has standing to appeal the ZHE's decision.

122           3. A quasi-judicial appeal hearing of which the Appellant had notice, could have  
123 attended, could have had an opportunity to argue the case, present new evidence and witnesses  
124 to testify, and to cross examine witnesses was held on March 11, 2026.

125           4. The findings of the ZHE that the Appellant failed to satisfy IDO, § 6-6(O)(3)(a)  
126 are supported by substantial factual evidence in the record.

127           5. The Appellant's proposed front yard fence would violate set back requirements  
128 and height limitations in the IDO.

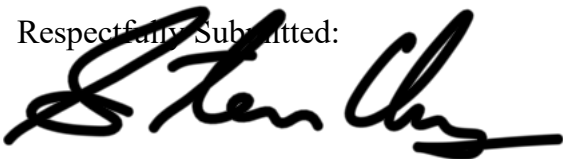
129           6. In the appeal, the Appellant failed to rebut or show that the ZHE erred either in  
130 the facts or in applying the IDO.

131           7. The decisions of the ZHE should be sustained.

132           8. The appeal should be denied.

133           9. The Appellant is responsible for her own costs of the appeal, if any.

134 Respectfully Submitted:

135 

Steven M. Chavez, Esq.  
Land Use Hearing Officer  
March 19, 2026

Copies emailed to:

- Appellant
- ZHE
- City Council and Staff
- Other interested persons as indicated in the email notification