



City of Albuquerque
Code Enforcement Division
600 2nd St. NW
Albuquerque, NM 87102

SPECIAL EXCEPTION VARIANCE

The Comprehensive City Zoning Code defines *VARIANCE* as a “Variation from the strict, literal application of this article; however, the allowable use of premises may never be changed via a variance.”

A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:

- (a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
- (b) There are special circumstances applicable to the subject property which 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;
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
- (d) Substantial justice is done.

Voiding of Special Exceptions

- (1) An approved special exception shall be void one year after the date approval vested if the rights and privileges granted thereby have not been utilized.
- (2) An approved special exception shall be void if it is utilized in a way materially in violation of the terms of approval for a continuous period of one year or more. Such voidance is in addition to and not instead of other remedies available to the city at any time for violation of this Zoning Code.
- (3) An approved conditional use shall be void if, after the use has begun, it ceases on the approved site for a continuous period of one year or more.

Responsibility of Property Owner

A person who acquires a property interest in a site which was previously granted a special exception has the responsibility to learn the terms of such approval. The existence of an activity or structure which is not in compliance with regular zoning provisions constitutes constructive notice that there may be a special exception, the terms of which must be met.