



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."

It is the burden of the applicant to ensure that there is such evidence in the record. The city can approve a variance only if the evidence presented to the record shows that the following criteria are met:

- (a) The property is exceptional:
 - 1. The parcel is exceptional as compared with other land in the vicinity subject to the same regulations by reason of the physical characteristics of the land, which physical characteristics existed at the time of the adoption of the regulation or were created by natural forces or by governmental action for which no compensation was paid.
 - 2. The parcel is exceptional as compared with other land in the vicinity subject to the same regulations by reason of the conditions or use of the parcel or other land in the vicinity which condition or use existed at the time of adoption of the regulations; or
 - 3. The parcel is irregular, unusually narrow or shallow in shape, and the conditions existed at the time of the adoption of the regulation or were created by natural forces or governmental action for which no compensation was paid; and
- (b) As a result of the exceptional aspect of the property, the regulations produce unnecessary hardship; an unnecessary hardship is one that either:
 - 1. Creates an exceptional, substantial, and unjustified limitation of the property owner's reasonable use of his property; or
 - 2. Deprives the owner of a reasonable return on the property under any use permitted by its existing zone.
- (c) A particular variance is appropriate to prevent the unnecessary hardship. The decision on whether to grant a particular variance depends upon a comparison of the special circumstances shown by the applicant (i.e., as per divisions (a) and (b) above) and the

public interest. To be justified, a variance must permit only development which meets the following criteria:

1. It differs from development which would be permitted under existing regular zoning regulations no more than is necessary to overcome the unnecessary hardship;
 2. The variance will not significantly interfere with the enjoyment of other land in the vicinity; and
 3. It is consistent with the spirit of this Zoning Code, substantial justice, and the general public interest.
- (d) Financial gain or loss shall not be the sole determining factor in deciding a variance.

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.