



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

Jeffrey Aguilar requests a Permit - Wall or Fence - Major for Lot 13, Block 6, Buena Ventura Subdivision, located at 127 Espejo Street NE, zoned R-MH.

Special Exception No:	MZP-2026-00053
Project No:	PR-2026-000158
Hearing Date:	09-15-26
Closing of Public Record:	09-15-26
Date of Decision:	09-30-26

On September 15, 2026, Jeffrey Aguilar ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a Permit - Wall or Fence - Major ("Application") upon the real property located at 127 Espejo Street NE ("Subject Property"). Below are the ZHE's findings of fact and decision.

FINDINGS, PERMIT - WALL OR FENCE - MAJOR:

1. Applicant requests a Permit - Wall or Fence - Major pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance ("IDO") § 14-16-6-6(H). IDO § 14-16-6-6(H)(1)(a) applies because the wall or fence requires a Permit - Wall or Fence - Major under IDO § 14-16-5-7(D)(3)(a)2, and IDO § 14-16-6-6(H)(2)(c) requires the ZHE to conduct a public hearing and make a written decision.
2. Applicant is the owner of the Subject Property and has authority to pursue the Application pursuant to IDO § 14-16-6-4(D). Applicant did not identify or authorize an agent and appeared on his own behalf. (Application; Applicant's hearing testimony.)
3. The Planning Director's designee determined the Application complete on August 4, 2026, pursuant to IDO § 14-16-6-4(G). The analyses and studies listed in IDO § 14-16-6-4(H) were not required. (Planning staff report; administrative record.)
4. The Application was referred to commenting agencies pursuant to IDO § 14-16-6-4(I). For a Permit - Wall or Fence - Major, Table 6-1-1 requires electronic notice under IDO § 14-16-6-4(J)(2) and web posting under IDO § 14-16-6-4(J)(6). The application materials, notice records, and Applicant's sworn testimony establish that the required notice content, electronic notice to pertinent neighborhood associations, and web posting were completed. No pre-submittal tribal meeting was required under IDO § 14-16-6-4(B) because Table 6-1-1 does not require one for this application type. (Notice materials; Planning staff report; Applicant's hearing testimony.)
5. The Subject Property is Lot 13, Block 6, Buena Ventura Subdivision, located at 127 Espejo Street NE, is approximately 0.155 acre, is zoned R-MH, and contains low-density

residential development. Espejo Street is classified as a local street. (Application; site plan; Planning staff report.)

6. The Application concerns an existing wall or fence in the front yard, within 10 feet of the lot line abutting Espejo Street, with a total height of approximately 5.5 feet. The wall or fence was installed before Applicant acquired the Subject Property. A Notice of Violation, IDO-2026-05597, was issued on July 13, 2026, for the wall or fence without the required approval. (Application; July 20, 2026 justification letter; Notice of Violation; site photographs; Applicant's hearing testimony.)
7. Table 5-7-1 establishes a 3-foot standard maximum height for a residential wall in a front or street side yard. IDO § 14-16-5-7(D)(3)(a)2 and Table 5-7-2 allow view fencing above 3 feet to a maximum total wall height of 5 feet when the wall is less than 10 feet from the lot line abutting the street, upon approval of a Permit - Wall or Fence - Major. The additional 0.5 foot requires the companion Variance - ZHE in VA-2026-00117 pursuant to IDO §§ 14-16-5-7(D)(1)(b) and 14-16-6-6(O).
8. IDO § 14-16-6-6(H)(3) provides:

An application for a Permit - Wall or Fence - Major for a wall in the front or street side yard of a lot with low-density residential development in or abutting any Residential zone district that meets the requirements in § 14-16-5-7(D)(3)(a)2 (Exceptions to Maximum Wall Height) and Table 5-7-2 shall be approved if all of the following criteria are met.

(a) The wall is proposed on a lot that meets any of the following criteria:

- 1. The lot is at least 1/2 acre.*
- 2. The lot fronts a street designated as a collector, arterial, or interstate highway.*
- 3. For a front yard wall taller than allowed in Table 5-7-1, at least 10 percent of the properties with low-density residential development with a front yard abutting the same street as the subject property and within 330 feet of the subject property along the length of the street the lot faces have a front yard wall or fence over 3 feet. This distance shall be measured along the street from each corner of the subject property's lot line, and the analysis shall include properties on both sides of the street.*
- 4. For a street side yard wall taller than allowed in Table 5-7-1, at least 20 percent of the properties with low-density residential development with a side yard abutting the same street as the subject property and within 330 feet of the subject property along the length of the street the lot faces have a street side yard wall or fence over 3 feet. This distance shall be measured along the street from each corner of the subject property's lot line, and the analysis shall include properties on both sides of the street.*

(b) The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.

(c) The design of the wall complies with any applicable standards in § 14-16-5-7 (Walls and Fences), including but not limited to § 14-16-5-7(E)(2) (Articulation and Alignment), § 14-16-5-7(E)(3) (Wall Design), and both of the following criteria:

- 1. The wall or fence shall not block the view of any portion of any window on the front facade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house.*
 - 2. The design and materials proposed for the wall or fence shall reflect or enhance the quality of walls and fences in the surrounding area.*
9. Applicant bears the burden of providing a sound justification for the requested decision based on substantial evidence and of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO § 14-16-6-4(E)(3)-(4). The Application must also satisfy the general criteria in IDO § 14-16-6-4(M).
10. Applicant appeared at the September 15, 2026 hearing and gave sworn testimony in support of the Application. Together with the written application materials, maps, photographs, agency comments, and public comments, that testimony constitutes substantial evidence in the record.
11. The map and inventory submitted with the Application identify 21 properties with low-density residential development having front yards abutting Espejo Street within the required 330-foot measurement area and identify four of those properties as having a front yard wall or fence over 3 feet. Four of 21 properties is approximately 19 percent and exceeds the 10 percent threshold in IDO § 14-16-6-6(H)(3)(a)3. Written public comments questioned whether some comparison walls were permitted, but the criterion counts properties with walls or fences over 3 feet and does not require proof that each comparison wall was permitted. The criterion is met. (Application map and inventory; public comments dated September 9, 2026; Applicant's hearing testimony.)
12. The proposed wall, as conditioned, will not be injurious to adjacent properties, the surrounding neighborhood, or the larger community under IDO § 14-16-6-6(H)(3)(b). Written public comments raised concerns about precedent, passive surveillance, walkability, and driveway visibility, and the City Traffic Engineer objected or required resubmittal based on visibility concerns. Other written comments described the wall as attractive. Applicant's sworn testimony, the site plan, and the record photographs establish that converting every portion above 3 feet to view fencing will preserve visual transparency and passive surveillance while providing perimeter security. The ZHE finds that the condition directly addresses the material concerns and that the criterion is met. (Public comments; Transportation referral comments; site plan and photographs; Applicant's hearing testimony.)
13. The wall or fence, as conditioned, complies with IDO § 14-16-5-7(E)(1) (Materials and Texture). The masonry base and vertical masonry elements are acceptable wall materials under § 14-16-5-7(E)(1)(b), and the condition limits the upper portion to view fencing constructed of materials allowed by the IDO definition of View Fencing. Substantial evidence establishes compliance, and the record identifies no prohibited material or texture. (Site photographs; Applicant's hearing testimony; condition of approval.)
14. The proposal, as conditioned and together with the companion variance, satisfies IDO § 14-16-5-7(D)(3)(a)2 and Table 5-7-2. The wall is less than 10 feet from the lot line abutting the street; the companion variance authorizes a total height of 5.5 feet; and the condition requires all portions higher than 3 feet to be view fencing as defined and specifically

regulated by the IDO. (Site plan and photographs; Applicant's hearing testimony; condition of approval.)

15. The wall satisfies IDO § 14-16-5-7(E)(2) (Articulation and Alignment). Although the Planning staff report contains a contrary statement that the wall did not meet § 14-16-5-7(E)(2), the record photographs show vertical masonry elements, and Applicant's sworn hearing testimony established that the dimensions and spacing satisfy at least one of the listed articulation options. The ZHE credits that specific photographic and testimonial evidence over the contrary conclusory statement. Substantial evidence in the record establishes compliance. (Planning staff report; site photographs; Applicant's hearing testimony.)
16. The wall, as conditioned, satisfies IDO § 14-16-5-7(E)(3) (Wall Design). Requiring view fencing for every portion above 3 feet provides openings distributed throughout the upper portion of the wall and satisfies at least Option 1 in § 14-16-5-7(E)(3)(a). (Site photographs; Applicant's hearing testimony; condition of approval.)
17. Substantial evidence establishes that the wall or fence, as conditioned, will not block the view of any portion of a window on the front facade of the primary building when viewed from 5 feet above ground level at the centerline of Espejo Street, as required by IDO § 14-16-6-6(H)(3)(c)1. Written public comments expressed a general concern about blocked views and reduced eyes on the street; Applicant's sworn testimony and the required transparent upper portion establish compliance with the specific criterion. (Public comments; site photographs; Applicant's hearing testimony; condition of approval.)
18. The design and materials, including masonry elements below 3 feet and required view fencing above 3 feet, reflect or enhance the quality of walls and fences in the surrounding area as required by IDO § 14-16-6-6(H)(3)(c)2. The application inventory documents other front yard walls or fences over 3 feet in the same area, and a written commenter described the fence as attractive while expressing other concerns. (Application photographs, map, and inventory; public comments; Applicant's hearing testimony.)
19. The wall is subject to IDO § 14-16-5-7(C)(1)-(2), including clear sight triangle, right-of-way, alignment, and easement requirements. The Transportation referral raised a visibility concern and required resubmittal. Applicant's sworn testimony, the site plan, and the record photographs establish that the wall is on the Subject Property and that the required view fencing above 3 feet will maintain transparency. This approval does not authorize encroachment into a public right-of-way or noncompliance with applicable clear sight triangle requirements. Substantial evidence supports compliance as conditioned. (Transportation referral comments; site plan and photographs; Applicant's hearing testimony.)
20. Under IDO § 14-16-6-4(M)(1), Applicant's justification is sound and supported by substantial evidence, including the application, justification letter, site plan, photographs, neighborhood wall inventory, and sworn hearing testimony.
21. Under IDO § 14-16-6-4(M)(2), the specific approval criteria in IDO § 14-16-6-6(H)(3) are met for the reasons stated in Findings 11 through 19.
22. Under IDO § 14-16-6-4(M)(3), to the extent applicable, the Application as conditioned complies with the applicable IDO standards and other adopted City requirements identified

in the record. No prior permit condition affecting the Subject Property was identified in the record.

23. The record does not establish any basis for discretionary denial under IDO § 14-16-6-4(M)(4).
24. IDO § 14-16-6-4(O)(2)-(4) authorizes the ZHE to impose conditions necessary to bring an application into compliance and mitigate negative impacts. Requiring every portion of the fence higher than 3 feet to be view fencing is reasonably related to IDO § 14-16-5-7(D)(3)(a)2, Table 5-7-2, the wall-design requirements, and the visibility and neighborhood-impact concerns in the record. The condition is necessary to establish compliance and is supported by Findings 12 through 19.

DECISION:

APPROVAL of a Permit - Wall or Fence - Major for Lot 13, Block 6, Buena Ventura Subdivision, located at 127 Espejo Street NE, subject to the following condition.

CONDITION OF APPROVAL:

1. All portions of the fence higher than three (3) feet shall be view fencing, as defined and specifically regulated by the IDO, including IDO § 14-16-5-7(D)(3)(a)2 and Table 5-7-2. This condition is supported by Finding 24.

APPEAL:

If you wish to appeal this decision, you must do so by October 15, 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 Permit - Wall or Fence - Major 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.



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cc: Applicant - Jeffrey Aguilar, jjeffrey630@gmail.com
ZHE File
Zoning Enforcement