



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

Jeffrey Aguilar requests a Variance of 0.5 feet to the 5-foot maximum wall height for view fencing for Lot 13, Block 6, Buena Ventura Subdivision, located at 127 Espejo Street NE, zoned R-MH.

Special Exception No:	VA-2026-00117
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 (the "ZHE") requesting a Variance of 0.5 feet to the 5-foot maximum wall height for view fencing ("Application") upon the real property located at 127 Espejo Street NE (the "Subject Property"). Below are the ZHE's findings of fact and decision.

FINDINGS, VARIANCE TO MAXIMUM WALL HEIGHT:

1. Applicant requests a Variance of 0.5 feet to the 5-foot maximum wall height for view fencing pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance ("IDO") § 14-16-6-6(O). IDO § 14-16-6-6(O)(1) applies because the request is for an exception to an IDO wall-height standard, and IDO § 14-16-6-6(O)(2)(e) requires the ZHE to conduct a public hearing and make a 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 Variance - ZHE, Table 6-1-1 requires electronic, mailed, posted-sign, published, and web-posting notice under IDO § 14-16-6-4(J)(1)-(6), and allows a post-submittal facilitated meeting under IDO § 14-16-6-4(K) if timely requested. The application materials, notice records, and Applicant's sworn testimony establish that the required notice content and each required form of notice were completed, including mailed notice on August 11, 2026, and publication and web posting on August 31, 2026. The record identifies no timely facilitated-meeting request that required the hearing to be delayed. (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 front-yard wall or fence, 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. Because the wall is approximately 5.5 feet high, the additional 0.5 foot requires a Variance - ZHE under IDO §§ 14-16-5-7(D)(1)(b) and 14-16-6-6(O).

8. IDO § 14-16-6-6(O)(3)(a) provides:

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.*
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. Special circumstances applicable to this single lot are not self-imposed by Applicant and do not apply generally to other property in the same zone district and vicinity. Applicant's sworn testimony established that the location, existing developed layout, and physical characteristics of the lot and its preexisting improvements create practical difficulties from strict compliance with the 5-foot maximum. The existing approximately 5.5-foot wall or fence was installed before Applicant acquired the Subject Property and was represented to Applicant as permitted; Applicant's acquisition and reliance did not create that physical condition. Strict compliance would require removal or reconstruction of the existing upper portion. IDO § 14-16-6-6(O)(3)(a)1 is met. (July 20, 2026 justification letter; Notice of Violation; site plan and photographs; Applicant's hearing testimony.)
 12. The Variance, as conditioned, will not be materially contrary to public safety, health, or welfare under IDO § 14-16-6-6(O)(3)(a)2. The City Traffic Engineer objected or required resubmittal based on visibility concerns, and public comments also raised driveway visibility and passive-surveillance concerns. Applicant's sworn testimony, the site plan, and the record photographs establish that requiring every portion above 3 feet to be view fencing will preserve visual transparency and

passive surveillance. The ZHE finds the condition directly addresses the material safety concern. (Transportation referral comments; public comments; site plan and photographs; Applicant's hearing testimony.)

13. The Variance, as conditioned, will not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity under IDO § 14-16-6-6(O)(3)(a)3. Written public comments raised concerns about precedent, walkability, window views, and driveway visibility. The requested deviation is limited to 0.5 foot, and the required view fencing above 3 feet mitigates the identified visual and surveillance impacts. Substantial evidence, including Applicant's sworn testimony and the record photographs, establishes that no significant material adverse impact will result. (Public comments; site photographs; Applicant's hearing testimony; condition of approval.)
14. The Variance, as conditioned, will not materially undermine the intent and purpose of the IDO, the R-MH zone district, or any applicable Overlay Zone under IDO § 14-16-6-6(O)(3)(a)4. The record identifies no applicable Overlay Zone. The 0.5-foot deviation retains the IDO's required transparent upper-wall treatment, and the wall complies with the applicable design standards for the reasons stated in Findings 17 through 21. (Planning staff report; site photographs; Applicant's hearing testimony; condition of approval.)
15. The requested 0.5-foot Variance is the minimum necessary to avoid the practical difficulty under IDO § 14-16-6-6(O)(3)(a)5 because it authorizes only the measured difference between the 5-foot maximum in Table 5-7-2 and the existing approximately 5.5-foot wall or fence. No greater deviation is approved. (Application; site plan; Applicant's hearing testimony.)
16. IDO § 14-16-5-7(D)(1)(b) requires a Variance for walls taller than allowed by Table 5-7-1 and § 14-16-5-7(D)(3). The Application is the required Variance - ZHE under IDO § 14-16-6-6(O), and the five variance criteria are met as stated in Findings 11 through 15.
17. The proposal, as conditioned and together with the companion Permit - Wall or Fence - Major, satisfies the substantive purpose of 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 approved variance is limited to an additional 0.5 foot; 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.)
18. 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.)
19. The wall satisfies IDO § 14-16-5-7(E)(2) (Articulation and Alignment), which applies to portions approved above the maximum height. 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.)
20. 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.)

21. The wall remains 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.)
22. 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, and sworn hearing testimony.
23. Under IDO § 14-16-6-4(M)(2), the specific approval criteria in IDO § 14-16-6-6(O)(3)(a) are met for the reasons stated in Findings 11 through 15.
24. 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.
25. The record does not establish any basis for discretionary denial under IDO § 14-16-6-4(M)(4).
26. 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 21.

DECISION:

APPROVAL of a Variance of 0.5 feet to the 5-foot maximum wall height for view fencing 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 26.

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 Variance 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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Zoning Hearing Examiner

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