BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER

APPEAL NO. AC-26-06
MZP-2026-00019

JOLYNN MAESTES,

Appellant,

TAYLOR TANQUERAY,

Applicant/Appellee

PROPOSED DISPOSITION TO CITY COUNCIL

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I. INTRODUCTION & BACKGROUND

In this appeal, the Zoning Hearing Examiner (ZHE) approved the Applicant-Appellee's application for a 4-foot tall perimeter fence, with a 41 to 48 inch front setback on a .45 acre lot at 637 Solar Road, NW **[R. 004]**.[1] The Appellant, Jolynn Maestes, filed an appeal disputing three of the ZHE's findings and conclusions regarding the efficacy of the front setback and the

1. Citations to the record are enclosed in brackets with the letter "R. and page number."

fence in general in the neighborhood in which it will be placed. The Appellant owns the residential property across the street from the Applicant's property on Solar Rd. **[R. 009]**.

After reviewing the record, including the supplemental evidence submitted by the parties, the IDO, and after considering the testimony and arguments of the parties, I recommend that the City Council deny the appeal. As shown below, I find that the ZHE's findings and conclusions are well supported by the record. The Appellant has not met the burden of proof for appeals required under the Integrated Development Ordinance (IDO), § 6-4(U)(4)(a).[2] Specifically, the Appellant presented insufficient evidence to demonstrate that the ZHE erred in interpreting the facts or in applying the IDO. Nor has the Appellant shown that the ZHE's decision lacks the support of substantial evidence in the record. The appeal should be denied and the ZHE's decision upheld.

The evidence in the record shows that the Applicant retained a contractor to construct a fence along the perimeter of his vacant .45 acre lot[3] **[R. Appeal Hrg.]**. At the appeal hearing, the Applicant testified that the contractor incorrectly advised him that a permit was not necessary for the fence construction **[R. Appeal Hrg.]**. Apparently, after the Applicant learned that a permit was necessary, construction stopped and an application for a Wall/Fence Permit was submitted to the ZHE **[R. 036]**. In the initial application, the Applicant described the height of the proposed fence as a 5-foot tall fence **[R. 036]**. However, after discussion with city Planning Staff, the Applicant amended the application, reducing the height of the fence to

2. Because the application was submitted and accepted as complete prior to April 2026, the IDO, effective April 2025 is applicable.

3. The lot currently does not have a dwelling on it, but it does have an outbuilding utilized for two horses the Applicant keeps on the lot **[R. 059]**.

4 feet **[R. 040]**. Other than the fence posts, the entire fence is intended to be comprised of vertical and horizontal 3/16 inch diameter *"steel wire fabric"* separated by 2 by 4 inch openings to allow for transparency, view fencing as defined in the IDO **[R. 059]**. Under the IDO, view fencing is an exception to the three foot front yard height, and the 10 foot setback required for a fence. See, IDO, Table 5-7-2. With view fencing, a front yard fence can be setback less than 10 feet, and the height can be up to five feet. IDO, Table 5-7-2.

The lot and the residential properties on Solar Rd. are zoned R-1C for residential uses and the area is classified as an area of consistency under the Comprehensive Plan **[R. 021]**. The neighborhood is considered *"semi-rural"* residential and *"agriculturally oriented"* by some of its residents **[R. 060]**. The Appellant did not dispute this. Solar Rd. does not have sidewalks on either side of the right-of-way. However, Solar Rd. has a shallow concrete drainage gutter and a dedicated bicycle lane on both sides of the roadway's right-of-way **[R. 003, 030]**. These facts remain undisputed.

The Appellant resides in a dwelling across the street from the Applicant's property, and the Appellant's mother resides in the dwelling on the lot that abuts the east side of the Applicant's lot. The Appellant claims that she is also representing her mother. Although there is no evidence in the record authorizing this, the Applicant did not dispute the claim.

There is evidence in the record that the city's Transportation Engineer does not have any objections to the application, including the height and the front setback of the fence **[R. 003]**.[4] In addition, as required under IDO, § 6-6(H)(2)(b), city Planning Staff reviewed the

4. Notably, the comments from the city's Transportation Engineer were not in the record; however, the record was subsequently supplemented to include the Transportation Engineer's comments.

application and recommended that the ZHE approve the amended application **[R. 015]**.

There is substantial evidence in the record that the Applicant sent notice of the application and the ZHE hearing to neighboring residents within 100 feet of the application site and to the affected neighborhood association **[R. 040-046]**. On April 21, 2026, the ZHE held a public, quasi-judicial hearing on the application. And, on May 6, 2026, the ZHE transmitted an official Notification of Decision, approving the application with conditions **[R. 004]**. This appeal was timely filed on May 19, 2026 **[R. 009]**.

A quasi-judicial appeal hearing was held on August 19, 2026. At the hearing, the parties were allowed to testify, present evidence, supplement the record with relevant evidence, and cross-examine testimony. Because the Appellant owns property within 100 feet of the application site, on the basis of proximity under IDO, § 6-4(U)(2)5 and under Table 6-4-2, the Appellant has standing to appeal the ZHE's decision **[R. 009]**.

In the appeal, Appellant generally contends that the ZHE erred because he did not find that the 41 to 48 inch front setback of the fence will create *"vehicular, pedestrian, and bicycle safety concerns"* **[R. 009]**. Specifically, Appellant contends that the fence will obstruct sight lines to the roadway from the driveway of her mother's lot **[R. 009-010]**.[5] The Appellant also argues that the ZHE erred when he concluded that at least 20% of other properties within 330 feet of the application site have front yard walls or fences taller than 3 feet in height **[R. 010]**. Next, Appellant argues that there is no evidence in the record to support the ZHE's conclusion

5. From the photographs in the record, it can be gleaned that the driveway appears to be separated from the east property line by *approximately* 7 to 8 feet **[R. 030]**. However, other than the photographs in the record, the Appellant did not provide any additional detail of the separation between the fence at issue and the driveway on her mother's property. Although, Appellant also generally claims that the fence obstructs pedestrian visibility, she did not provide any explanation of this unusual theory.

that the proposed fence will strengthen the neighborhood character **[R. 010]**. Notably, these are all the same arguments that Appellant presented to the ZHE and which the ZHE rejected in the April 21, 2026, hearing **[R. 056-061]**. Notwithstanding the ZHE hearing, each of these issues will be discussed below.

II. STANDARD OF REVIEW

A review of an appeal under the IDO is a whole-record review to determine whether the ZHE's decision approving the fence application was fraudulent, arbitrary, or capricious under the IDO; or whether the decision is not supported by substantial evidence; or if in approving the application, the ZHE erred in the facts, or in applying the requirements of the IDO regulations. See IDO, § 6-4(U)(3)(d). The Land Use Hearing Officer (LUHO) is an independent hearing officer and has been delegated the authority by the City Council to hold quasi-judicial appeal hearings regarding appeals under the IDO, make findings, and to propose a disposition of appeals, including whether the decision appealed should be affirmed, reversed, or otherwise modified to bring the decision into compliance with the standards and criteria of the IDO. See IDO, § 6-4(U)(3)(d).

III. DISCUSSION

As stated above, the Appellant's arguments were rejected by the ZHE. In this appeal, however, Appellant did supplement her contentions regarding the sight line views from her mother's driveway with three new photographs that were included in the record. The Applicant, Taylor Tanqueray, did not object to the new evidence. These photographs will be briefly

discussed below.

Appellant's first argument rests on her belief that the front yard fence is not set back sufficiently from the drainage gutter on the roadway's right-of-way. Although the IDO does not require it, the Appellant believes that the fence should be set back at least 20 feet from the roadway **[R. 012]**. Without any evidence, Appellant speculates that a 20-foot setback of the front yard fence is necessary so that sight line views from her mother's driveway are not obstructed **[R. 012]**. The Appellant's photographs do not show the visual impairment she claims is caused by the fence posts. I find that the photographs demonstrate that the roadway is sufficiently visible and not obstructed to a degree that requires a reversal of the ZHE's decision.

Notably, the city's Transportation Engineer had no objection to the setback **[R. Inter-office Email, dated, 4-13-26]**. Moreover, city Planning Staff confirmed for the ZHE that the fence will satisfy the 50% transparency requirement for view fencing under the IDO. The purpose of the view fencing requirement in the IDO (Table 5-7-2) is to allow for at least 50% transparency for front yard fences or walls taller than 3 feet in height. Specifically, a front yard fence must include the element of 50% transparency, view fencing above the three foot height of the fence. See IDO, Table 5-7-2. Conversely, the other 50% of the fence above three feet in height is presumed (under the view fencing requirement) to be non-transparent or "opaque" as it is termed in the IDO. As stated above, the Applicant's proposed fence is intended to have view fencing over the entire height of the fence, not just above the 3 foot mark. Finally, in approving the fence (perhaps for good measure), the ZHE set a condition requiring that the fence placement:

"...shall meet all required clear sight triangle criteria and must not impede pedestrian traffic."

[R. 006].

Appellant's new evidence photographs do not show with substantial evidence that the proposed fence will not satisfy the view fencing requirement of Table 5-7-2 or the ZHE's condition of approval restated above. Nor has Appellant shown with substantial evidence that the views from the driveway will be obstructed or otherwise injurious to someone backing out of the driveway. Appellant's argument on this claim is based entirely on her subjective beliefs. On this point, Appellant has also not demonstrated with substantial objective evidence that the ZHE erred in Finding 18, which states that the fence *"would not be injurious to adjacent properties"* **[R. 005]**. See Standard of review above in Section II.

In an administrative, quasi-judicial appeal, the standard for judging the ZHE's interpretation of any provision, rule, standard, policy, or evidence in the record is whether that interpretation is reasonable and rational, not whether substantial evidence might also support the Appellant's interpretation of the facts. *Huning Castle Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15. I find that in consideration of the evidence in the record, the ZHE did not abuse his discretion when he rejected Appellant's arguments that the fence will impair sight views of the roadway from the driveway.

Likewise, the ZHE's conclusion that the fence will not be injurious in Finding 18 is supported by the fact that the entire fence is intended to be 50% transparent, is only 4 feet tall, and set back up to 4 feet from the closest roadway right-of-way point--the drainage gutter along the street. And, although Appellant believes that the fence will have insufficient transparency, it has not shown with substantial evidence that the ZHE erred in finding otherwise. Without

more, I cannot find that the ZHE erred in with the findings regarding the setback and the injurious standard. *Huning Castle Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15. And, although the street lacks a sidewalk, there is evidence that the ZHE considered this fact in approving the application **[R. 043, 048, 057]**. Undoubtedly, the fact that there were no objections from the city's Transportation Engineer Staff is strong evidence that the fence will not cause the obstructions that Appellant claims.

Next, Appellant contends that the ZHE erred when he found that there are other residential lots with taller front yard fences or walls within 330 feet of the application site. However, the record shows that the ZHE did not make that finding nor was it necessary or relevant to approve the fence. In reviewing an application for a front yard wall or fence taller than 3 feet, under the IDO, the ZHE must base a decision on one of four alternative provisions under § 6-6(H)(3)(a). However, for better clarity on the issue, the entirety of IDO, § 6-6(H)(3) is restated in full:

> Review and Decision Criteria
> 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 Subsection 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.
>
> 6-6(H)(3)(a) The wall is proposed on a lot that meets ***any*** of the following criteria.
>
> 1. The lot is at least ½ 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 20 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. (See figure below for an illustration of this measurement.)

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. (See figure below for an illustration of this measurement.)

6-6(H)(3)(b) The proposed wall would strengthen or reinforce the architectural character of the surrounding area.

6-6(H)(3)(c) The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.

6-6(H)(3)(d) The design of the wall complies with any applicable standards in Section 14-16-5-7 (Walls and Fences), including but not limited to Subsection 14-16-5-7(E)(2) (Articulation and Alignment), Subsection 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 façade 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 the architectural character of the surrounding area.

IDO, § 6-6(H)(3) (Emphasis added). Although in the preamble of § 6-6(H)(3), it states that "*all"* criteria must be satisfied, the ordinance has a duel-level structure of mandates. At the first level, the four criteria -- subsections (a) through (d) -- must be satisfied because they are conjunctive in their application. At the second level, subsection (a) is itself disjunctive: it is met where the lot meets *"any of the following criteria,"* so only one of the alternatives in (subsection (a)1 through (a)4 need be satisfied. Accordingly, the ZHE may approve an

application where the lot satisfies any one of the four alternatives in subsection (a) and the requirements of subsections (b) through (d) are also met.

The undisputed record shows that the Applicant's lot is .45 acres in size, slightly less than the ½ acre specified in subsection (a)1 of § 6-6(H)(3). However, under IDO, § 6-4(N), the ZHE allowed for a deviation of up to 10% on minimum lot size requirements of the IDO. With the deviation, the Applicant's lot satisfies the 1/2 acre criterion under the first test in § 6-6(H)(3)(a)1. The ZHE expressly found that the lot met the 1/2 acre criterion in Finding number 17 **[R. 005]**.

Thus, IDO, § 6-6(H)(3)(a)3, as it pertains to the percentage of front yard fences or walls within 330 feet of the application site (the 20% rule) is an unnecessary analysis and inapplicable to the facts in this appeal. Although the ZHE referenced the 20% rule in the decision, its reference was only because the 20% rule is one of the four alternative criteria under § 6-6(H)(3)(a), only one of which must be satisfied. The ZHE merely restated the entire ordinance provision, as I did above. See ZHE decision, Finding number 14 **[R. 005]**.

Finally, the Appellant contends that the ZHE erred in concluding that the fence *"strengthens the architectural character of the surrounding area"* as required under IDO, § 6-6(H)(3)(b) **[R. 010]**. Appellant believes that the lack of front yard fences within 330 feet of the application site indicates that the Applicant's fence is not representative of the architectural character of the neighborhood. Other than the absence of front yard fences or walls taller than 3 feet within 330 feet of the application site, Appellant has not presented any objective evidence to support her belief that the proposed fence is inconsistent with the character of the neighborhood. The lack of front yard fences alone is not necessarily emblematic of character

or the only manner of demonstrating a neighborhood's character. Architectural character can be shown in other ways; it can be shown through common building or structure material types, historic landmarks, street elements, density and neighborhood scale.

It should be reemphasized that in an appeal, an appellant has the burden of proof, not the ZHE. See IDO, § 6-4(U)(3)(a)3 and § 6-4(U)(4)(a)2. The only undisputed objective evidence of the character in the neighborhood is that the lots are generally approximately one-half acre lots, low density, with semi-rural streets (no sidewalks). Moreover, there was testimony in the record supporting that the area is *"livestock-friendly,"* and a *"semi-rural, agriculturally oriented neighborhood"* **[R. 060]**. The Appellant failed to present any evidence of what is traditionally considered the architectural or material palettes of the dwellings to dispute the ZHE's finding on the character.

The Appellant has not shown how the Applicant's proposed fence design somehow contravenes the character of the neighborhood described in the record. Without substantial evidence showing that the ZHE erred on this issue, or abused his discretion, I find that under the specific facts in this matter, a fence with sufficient view fencing, and at a height of 4 feet is not incompatible with a semi-rural, agriculturally oriented neighborhood, as the ZHE implicitly found. Under the evidence in the record, the ZHE's decision is rational and reasonable, and is not arbitrary or capricious.

Under New Mexico law, arbitrary and capricious action is action taken that "is unreasonable or without a rational basis, when viewed in light of the whole record." *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2003-NMSC-005, ¶ 17. Moreover, it is action taken "without proper consideration in disregard of the facts and

circumstances." *Perkins v. Department of Human Services*, 1987-NMCA-148, ¶ 20. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 1994-NMSC-126, ¶ 21. Accordingly, I further find that there is sufficient evidence in the record to support the ZHE's conclusion that the fence satisfies § 6-6(H)(3)(b) through (d).

In conclusion, the Appellant failed to meet her burden of proof in showing that the ZHE erred. She has not shown that a 4-foot tall fence, with view fencing is inconsistent with the architectural character of the neighborhood or causes any significant visual obstructions of the roadway. I find that under these facts, the ZHE deserves due deference under law on these issues.

IV. PROPOSED FINDINGS

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

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

2. Because the Appellant is a property owner within 100 feet of the application site, on the basis of proximity under the IDO, the Appellant has standing to appeal the ZHE's decision.

3. A quasi-judicial appeal hearing was held on August 19, 2026. The Appellant received notice of the hearing, attended, testified, cross-examined witnesses, and presented evidence.

4. The ZHE's findings and approval of the fence in this matter are well supported with substantial evidence in the record.

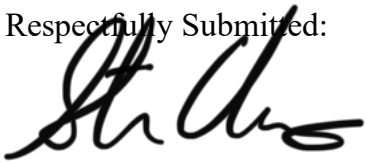
5. The Appellant failed to meet the burden of proof under the IDO for an appeal.

6. The decision of the ZHE should be sustained.

7. The appeal should be denied.

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

Respectfully Submitted:



Steven M. Chavez, Esq.
Land Use Hearing Officer
August 24, 2026

Copies emailed to:
Appellant
ZHE
City Council and Staff
Applicant

Notice Regarding City Council Rules Under IDO, § 6-4(U)(3)(e)

When the Council receives the Hearing Officer's proposed disposition of an appeal, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer's decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council "accept or reject" hearing.