On the 16th day of October, 2018, Jim Strosser, agent for property owner Titan Nob Hill, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to the required 3 foot wall height to allow for a 6 foot wall in the required street yard (“Application”) upon the real property located at 4119 Central Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 feet to the required 3 foot wall height to allow for a 6 foot wall in the required street yard.

2. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall reads: “A variance application for a taller front or side yard wall shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:

(1) The proposed wall would strengthen or reinforce the architectural character of the surrounding area;

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

(3) The wall is proposed on a lot that meets any of the following criteria:
   a. The lot is at least ½ acre;
      b. The lot fronts a street designated as a collector or above in the LRTS guide;
      c. At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.

(4) The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:
   a. 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.
   b. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.

3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-6(N)(3)(a).

4. Jim Strosser, agent for owner appeared and gave evidence in support of the application.
5. Josh Rogers, owner also appeared and gave evidence in support of the applications.
6. All property owners within 100 feet and affected neighborhood association were notified of the application.
7. The subject property is currently zoned MX-M.
8. The purpose of the MX-M zone district is to provide for a wide array of moderate intensity retail, commercial, institutional and moderate-density residential uses, with taller, multi-story buildings encouraged in Centers and Corridors.
9. The subject property is also under jurisdiction of a **Character Protection Overlay Zone District**, IDO Section 14-16-3(4)(I)-Nob Hill/Highland CPO – 8.
10. Nob Hill Neighborhood Association is the affected NA.
11. The applicant, agent and property owner attended the Nob Hill Neighborhood Association annual meeting August 13, 2018 and presented the proposed project and informed the NA of the variances requested and justification for these requests.
12. Nothing was submitted in opposition to the application.
13. The site includes a difference in finished grades between the eastern and western sides of the property.
14. The site is an entire city block
15. The finished floor on the eastern side of the building is raised approximately 4 feet above the sidewalk, elevating the ground floor balconies, in order to protect residents’ privacy and increase security.
16. Due to a grade change, the west side of the building results in a sidewalk 4 feet lower on the west side than the east side.
17. As a result of this grade change, the ground floor façade requires a retaining wall.
18. This retaining wall raises the first floor apartments significantly above the sidewalk.
19. This design also increases privacy and security for the apartment units by raising the balconies and side entrances to be above the sidewalk.
20. The site’s location along Central Ave NE, causes a challenge due to the need to balance security with the IDO’s requirement to create active and open street facades for Central frontage and all facades facing intersecting streets.
21. These requirements create practical difficulties for larger scale multifamily buildings located on sites with slight grade changes or other physical variations.
22. The existing wall height requirements regulations create special circumstances, causing and creating unnecessary hardship by not allowing the proposed use to be appropriately screened to provide privacy and security to residents of the project.
23. The proposed fencing will create visually open sites through the use of view fencing.
24. The application will allow increased perimeter walls and view fencing and are designed to increase residents’ privacy, security and safety by creating a secure parking area for the project.
25. The requests are designed to respond to the site conditions and safety concerns along Central Ave NE, and will result in increased security and privacy for residents.
26. The requests will not materially affect any adjacent properties.
27. The application will create lively, active facades, while respecting residents’ privacy.
28. Infrastructure improvements will not be impacted by the request.
29. The walls will be constructed on the interior of the site, with a grade change from the interior of the site to the perimeter and the street.
30. Changes to the east and west facades will not require any additional infrastructure improvements.
31. The special circumstances are not self-imposed.
32. The proposed buildings are supported and allowed by the underlying zoning district.
33. The requested variances will not materially undermine the intent and purpose of the IDO or the Nob Hill/Highlands CPO.
34. The proposed uses yield higher density multifamily development, which is compatible with the underlying zoning and other IDO development standards.
35. The intent of the IDO wall height regulations are to safeguard the neighborhood character of single family uses.
36. Adjacent single family residents to the north of the project all have rear yards facing Copper Avenue NE, and all are screened by existing 6 foot CMU walls.
37. Other uses adjacent to the project are either moderate intensity commercial uses or larger scale multifamily buildings.
38. The intensity of the proposed project and wall height variance request is appropriate to this property and area.
39. Transportation reported that it could not approve the wall as it was currently proposed, on the site plan, as the perimeter wall would encroach upon the clear sight triangle at the northwest entrance.
40. The remaining perimeter walls are acceptable.
41. Transportation reported that if Applicant submitted an amended site plan, replacing the portion of the perimeter wall that encroaches in the clear sight triangle with the proposed view fence, it would have no objection to the application.
42. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
43. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-4-2(C)(2)(a).
44. The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-4-2(C)(2)(b).
45. The subject property is a lot which is ½ acre or greater and the subject property address is on Central Ave NE. as required by Section 14-16-4-2(C)(2)(a) and (b).
46. The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences) including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:
   a. 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.
   b. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.
47. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
48. The ZHE finds that the Applicant has authority to pursue this Application.

**CONCLUSIONS OF LAW:**

The criteria within Section 14-16-6-6(N)(3)(a) of the Albuquerque Zoning Code are satisfied.
DECISION:

APPROVAL of a variance of 3 feet to the required 3 foot wall height to allow for a 6 foot wall in the required street yard

CONDITIONS

The design of the fence shall comply with the Specific-use standards for walls and fences, Section 14-16-5-7(A) through (E).

Applicant shall submit an amended site plan to Transportation and obtain approval from Transportation on the clear sight triangle requirement.

If you wish to appeal this decision, you must do so by November 15, 2018 in the manner described below. A non-refundable filing fee will be calculated at the Planning Department’s Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. Please present this letter of notification when filing an appeal. When an application is withdrawn, the fee shall not be refunded.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d). The Planning Department shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above; provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no
objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is **void after one year** from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.

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Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Titan Nob Hill LLC c/o Titan Development, 6300 Riverside Plaza Lane NW, Ste 200, 87120
Consensus Planning Inc, 302 Eighth Street NW, 87102