On the 16th day of October, 2018, property owner Titan Nob Hill, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 38% to the required 60% of the ground floor façade facing Montclaire DR NE (“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 38% to the required 60% of the ground floor façade facing Montclaire DR NE.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “… an application for a Variance-ZHE shall be approved if it meets all of the following criteria:

   (1) There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or 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 the IDO or the applicable zone district.

   (5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”

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)(c).
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 façade design directly addresses the grade elevation change and allows east and west ends apartments to remain level.
20. This design also increases privacy and security for the apartment units by raising the balconies and side entrances to be above the sidewalk.
21. 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.
22. These requirements create practical difficulties for larger scale multifamily buildings located on sites with slight grade changes or other physical variations.
23. The existing façade requirements 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.
24. The requests to the façade requirements are designed to respond to the site conditions and safety concerns along Central Ave NE and intersecting streets, and will result in increased security and privacy for residents.
25. The façade requirement requests will not materially affect any adjacent properties.
26. The application will create lively, active facades, while respecting residents’ privacy.
27. Infrastructure improvements will not be impacted by the request.
28. 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.
29. Changes to the east and west facades will not require any additional infrastructure improvements.
30. The special circumstances are not self-imposed.
31. The proposed buildings are supported and allowed by the underlying zoning district.
32. The requested variances will not materially undermine the intent and purpose of the IDO or the Nob Hill/Highlands CPO.
33. The proposed uses yield higher density multifamily development, which is compatible with the underlying zoning and other IDO development standards.
34. Other uses adjacent to the project are either moderate intensity commercial uses or larger scale multifamily buildings.
35. The intensity of the proposed project and façade variance request is appropriate to this property and area.
36. The request for a variance to the Nob Hill/Highlands CPO façade requirements will create an active street frontage and facade that provides a sense of human scale at ground level by providing a clear architectural distinction between ground floor levels and all other levels.(IDO Section 5-11(E)(2)(a).
37. The requests are the minimum necessary to meet both the façade and window/door requirements in the Nob Hill/Highland CPO.
38. The requested façade variances would strengthen or reinforce the architectural character of the surrounding area.
39. The requested façade variances would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.
40. There are special circumstances applicable to the Subject Property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-6-6(N)(3)(a)(1).
41. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2).
42. The variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(N)(3)(a)(3).
43. The variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(N)(3)(a)(4).
44. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
45. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
46. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 38% to the required 60% of the ground floor façade facing Montclaire DR NE.

CONDITIONS: Applicant shall comply with all applicable Use-Specific Standard Sections.

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