On the 15th day of January, 2019, Lorenzo Pina, agent for property owner Pete Domenici Jr. (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft max wall height (“Application”) upon the real property located at 129 Manzano ST NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

**FINDINGS:**

1. Applicant is requesting a variance of 3 ft to the 3 ft max wall height in the side yard setback in an MX-M zone district.
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 14-16-6-4(N)(1).
4. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned MX-M.
6. Highland Business and Neighborhood Association is the affected NA.
7. A letter dated November 20, 2018 notifying the NA of the Application was submitted.
8. Nothing from the NA was submitted.
9. A site plan was submitted.
10. Photographs of the existing business and surrounding area were submitted.
11. Lorenzo Pina, agent for owner appeared and gave evidence in support of the application.
12. Transportation reported Conditional Approval for the Application.
13. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
14. The existing business is a low income apartment complex.
15. A number of incidents involving vandalism and property damages have been reported to the police.
16. The proposed fence would provide greater safety and security for the residents and their children.
17. The proposed fence would allow children to play safely.
18. The proposed fence would discourage and deter crime.
19. The proposed fence would be constructed of wrought iron fencing and would be see-thru for safety.
20. Gary Eyster, 316 Amherst Dr NE, signed in and spoke in support of the Application.
21. He is a member of the Highland Business and NA.
22. A letter dated January 15, 2019, signed by the HBANA Board Members was submitted in support of the Application.
23. The Board specifically supports the use of wrought iron as fencing material, as it is see-thru and would act to discourage and deter crime.
24. 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).
25. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6-6(N)(3)(a)(2).
26. 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).
27. 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).
28. 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).
29. 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).
30. 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)(c) of the Albuquerque Zoning Code are satisfied.
DECISION:

APPROVAL of a variance of 3 ft to the 3 ft max wall height.

CONDITIONS:

The design of the fence shall comply with any applicable design standards in Sections 14-16-5-7 (Walls and Fences); 7-7(E)(2) (Articulation and Alignment); and 5-7(E)(3) (Wall Design).

APPEAL

If you wish to appeal this decision, you must do so by February 14, 2019 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.

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
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