



February 5, 2021

Planning and Development Services
City of Scottsdale
7447 E. Indian School Rd., Ste. 105
Scottsdale, Arizona 85251

**RE: Special Exemption—Environmentally Sensitive Lands Overlay District
28247 N. 78th Street, Scottsdale, Arizona 85266**

Planning and Development Services Staff:

Please accept this letter and the enclosed documents as the application materials for a Special Exemption to deviate from the Foothills-Overlay District (“F-O”) development standards delineated in the City of Scottsdale (the “City”) Zoning Ordinance. The subject property is located at 28247 N. 78th Street, Scottsdale, Arizona 85266 (APN: 216-69-156A) (the “Property”). See **Exhibits 1 & 2**. The Property is zoned R1-70, Single Family Residential (“R1-70”) and is located in the F-O.

REQUEST OVERVIEW

The request is to validate an already constructed wall located on the Property. Daniel Harbut (the “Property Owner”) resides at the Property and has taken considerable steps to beautify and enhance the Property. This request merely seeks to allow the Property Owner to deviate from the development standards of the F-O standards in order to bring his Property into compliance with the City’s Zoning Ordinance and to rectify the existing wall’s height encroachment. This request is not to construct a wall, but to allow an existing wall to remain.

BACKGROUND / HISTORY

The Property Owner has owned the Property since the early 2000’s. The Property is nearly two acres in size and is located on the northeast corner of Dynamite Blvd. and 78th St. Dynamite Blvd. and 78th St. border the Property to the south and west, respectively. The Property is surrounded by residential lots to the north and east.



Dynamite Blvd.'s popularity and use has steadily increased throughout the past two decades. The City classifies the road as a minor arterial and intends to widen the road to accompany its increased usability. Due to the road's increased usability, the Property Owner is impacted by the road's persistent noise and traffic. To eliminate the noise and better seclude the Property, the Property Owner added two feet of additional height to an already constructed six (6) foot wall located towards the Property's southern boundary. The fence is now eight feet in height.

In 2020, the Property Owner received a code enforcement complaint stating the additional fence height was constructed without a permit. Shortly after receiving the code enforcement complaint, the Property Owner took corrective measures in an effort to bring the Property back into compliance with the City's Zoning Ordinance.

REQUEST

As stated above, the request is for a Special Exemption to deviate from the development standards delineated by the F-O of the City's Zoning Ordinance. Two additional feet were added to the southern portion of the Property's wall; bringing the wall's height total to 8'. Section 6.1004(B) of the F-O does not permit "walls, fences, or hedges" to exceed 6' in height unless a Special Exemption is obtained. The City's Zoning Ordinance permits a Special Exemption to be granted to allow a wall located in the F-O to exceed 6' in height. Accordingly, the Property Owner requests this Special Exemption be granted to allow the south wall to total 8' in height.

REQUEST JUSTIFICATION

The City's Special Exemption procedures require the Special Exemption request meet all four of the following criteria. The enumerated criteria and an explanation of how the criteria are met follows

1. "Documentation of existing development approvals for the development site and the special exception eligibility of the parcel:"

The City's Zoning Ordinance allows for Special exemptions from certain F-O development standards for unique conditions, such as where there are substantial existing improvements to a property at the time the Foothills Overlay is applied to the property and/or there are significant areas of natural features occurring on the



property, the property owner may seek relief from the standards contained within the Foothills Overlay. Further, the City Council may approve an exemption from the F-O standards contained in the Zoning Ordinance if it has determined that the applicant has demonstrated that the proposal meets the stated purposes of the F-O and the results of the exemption are consistent in character of the uses within 1,000' of the property.

The F-O is intended to recognize and preserve the rural character in the low density lands and the overlay limits overbuilding of properties located in the district. Here, the Property Owner was forced to dedicate the southern portion of his property to the City for their envisioned road improvements. As a result of the dedication, the Property's southern wall no longer complied with the City's requirements. The Property Owner is not attempting to overbuild his property and the already existing wall does not jeopardize the rural character of the area.

The rural character of the area is preserved because a mere increase in wall height does not usurp the area's natural character. Further, development on the Property has been permitted (see **Exhibit 3**) and the 2' foot increase in wall height does not destroy the rural character of the neighborhood. Moreover, multiple homes along Dynamite Blvd. have increased the height of their walls to exceed 6'. This increase is necessitated by the noise and traffic produced by frequently traveled arterial. Accordingly, the Property Owner's increase is consistent in character of other uses within 1,000' of the Property because multiple homes have walls exceeding 6'.

2. "Environmental mapping necessary to identify the ESLO regulation(s) from which the special exception is requested:"

The attached environmental map indicates the already existing wall does not detrimentally impact the ESLO features on the Property. See **Exhibit 4**. The additional wall height was placed atop a long-standing wall, therefore no preservable vegetation or landscaping is impacted by this exemption. Further, the wall neither impacts nor alters the washes traversing the Property.

3. "A development plan showing the approved land uses and the areas that will be affected by the proposed special exception."

Exhibit 4 highlights the minor portion of the Property affected by the Special Exemption. The Special Exemption merely pertains to the southern wall that



shields the Property from the noise and traffic produced by Dynamite Blvd. The southern wall only touches and concerns a minor portion of the Property and neither the overall character nor rural feel of the Property will be impacted by the approval of this Special Exemption because it concerns such a small portion.

4. "A report describing the proposed exceptions from the ESLO regulations and describing the rationale from the exceptions."

Submitted and to be processed concurrently with this exemption is a Hardship Exemption which grants the Property relief from the ESLO setback requirements pursuant to Section 6.1083(E)(3) of the City's Zoning Ordinance. The Property's setback requirements will be reduced by 25 percent from 60 feet to 45 feet. The Hardship Exemption is justified because the Property is a corner lot, encumbered by two front yard setbacks. Further, the Property Owner was required to dedicate the southern portion of the Property to allow for the proposed Dynamite Blvd. expansion. The dedication reduced the Property's developable area along the south side of the Property and resulted in the already constructed wall being located in the Property's minimum setback area. The forced dedication unjustly burdened the Property Owner and the Hardship Exemption should be granted to provide relief.

Moreover, the Hardship Exemption does not usurp the ESLO's purpose. The purpose of ESLO is to identify and protect environmentally sensitive lands in the city and to promote public health, safety and welfare by providing appropriate and reasonable controls for the developments of such lands. The wall's height increase does not jeopardize the Property's environmentally sensitive lands because a taller wall does not determinately impact the surrounding area.

CONCLUSION

The Special Exemption criteria detailed above demonstrates that the exemption is minimally intrusive and does not usurp the natural open space feel of the area. The F-O District intends to preserve the rural desert character in the low-density lands that are generally not within subdivisions and create standards that help to define the area's unique character. The goals of the F-O are intended to minimize visual impacts of the buildings and other improvements on properties and blend the form of buildings and improvements into the desert environment. The wall in question is setback over 100 feet from the actual roadway travel lanes. The roadway dedication was granted to the City to fulfill that City requirement, which in turn affected the F-O requirement. The wall is



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significantly setback from the road behind mature trees and other desert vegetation. The impact to the community is minimal. By granting this special exemption, the City does not lose any rural feel to the character of the area and creates no visual impacts to the travelers of Dynamite Boulevard.



Exhibit 1 -- Context Map Aerial
28247 N. 78th Street, Scottsdale, AZ 85266





Exhibit 2 -- Parcel Map Aerial
28247 N. 78th Street, Scottsdale, AZ 85266



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| 240312 | 28247 N 78TH ST | | |
| 114322 | 28247 N 78TH ST | | |
| 110741 | 28247 N 78TH ST | | |
| 93617 | 28247 N 78TH ST | | |
| 93616 | 28247 N 78TH ST | | |
| 93615 | 28247 N 78TH ST | | |
| 93614 | 28247 N 78TH ST | | |

Exhibit 3 -- Property Permits

28247 N. 78th Street, Scottsdale, AZ 85266





Exhibit 4 -- Environmental Map
28247 N. 78th Street, Scottsdale, AZ 85266

