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Chandler



2010

MEMORANDUM Transportation & Development – BA Memo No. 12-008

DATE: JUNE 29, 2012

TO: BOARD OF ADJUSTMENT

THRU: R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *BJ*
 JEFF KURTZ, PLANNING ADMINISTRATOR
 KEVIN MAYO, PLANNING MANAGER *KM*

FROM: BILL DERMODY, SENIOR CITY PLANNER *BD*

SUBJECT: VAR12-0006 HARVEY RESIDENCE

Request: Variance from the Zoning Ordinance to allow a new shade structure to encroach into the minimum rear yard setback

Applicant: Ellis G. Harvey

Location: 3656 W. Fairview Lane, north and east of McClintock Drive and the Loop 202 Santan Freeway

Existing Use: Single-Family Home

Zoning: Planned Area Development (PAD)

RECOMMENDATION

Staff, upon finding the need for a variance to be self-imposed and the criteria by which all variances are reviewed to not be satisfied, recommends denial of the requested variance.

BACKGROUND

The application requests a variance from the zoning requirements to allow a new shade structure attached to the house to encroach 5' into the minimum 10' rear yard setback, leaving a setback of only 5'. The shade structure, constructed of metal support posts with a cloth shade cover, would cover part of a pool that is proposed for the same area. One end of the cloth shade cover would attach directly to the existing covered patio's support posts. A building permit has been issued for the pool and it will abide by all Zoning Code regulations.

The property, which contains a single-family home, is located in the Hearthstone Unit 3 subdivision zoned PAD. The subdivision's lots range from approximately 7,000 to 13,000 square feet in size, with most lots between 7,000 and 9,400 square feet. The subject lot is somewhat pie-shaped with a front property line that is approximately 20' longer than the rear property line. Also, the front property line is curved in a manner that follows the street's curve. Both the pie shape and curved front property line are common to most homes in the area due to the curved street system. The typically sized and shaped lot of 7,889 square feet contains a 1,350 (livable) square foot house built in 1986.

The applicant has recently received building permits for two items that do not appear in the attached aerial photographs: a pool and a rear patio. The pool permit was issued in May 2012 and no inspections have been conducted yet. An expanded rear patio concrete area and associated shade cover (attached to the house) were built and inspected in May 2012 – see applicant's photographs. The shade cover extends 11'-8" deep into the rear yard. The remaining part of the rear yard, beyond the existing shade cover, is approximately 23' deep.

In reviewing the subdivision's lots of a similar size, many have houses with patio covers located approximately 18' to 20' from the rear property line and livable space located approximately 27' to 29' from the rear property line. Some of these lots have pools, though none have shade covers that extend over the pools.

CODE REQUIREMENTS

Setbacks in the Hearthstone Unit 3 subdivision are established through the guidelines established by its approved Planned Area Development (PAD) zoning and associated Preliminary Development Plan:

35-1706. Description of preliminary development plan (to accompany a PAD).

(5) If the City Council approves the PAD zoning designation, the Official Zoning Map shall be so changed by ordinance. The Council may, as necessary, attach conditions to the PAD approval, which may include but are not limited to the following:

(d) Setback and height of buildings.

According to the development representation and Council approved conditions, the minimum rear yard setback is 10'.

FINDINGS

Below is a list of the criteria that the Board of Adjustment must use to review each variance request. Following each criterion are Staff's italicized responses. The applicant's written narrative answering the following criteria is included among the memo attachments.

- 1. Explain the special circumstances or conditions that apply to the land, building, or use referred to in the application. The special circumstances cannot be self-imposed by the property owner.**

The 7,889 square foot lot is a typical size and shape for the neighborhood. The back yard is also a similar size to others in the neighborhood. There are no special circumstances that apply to the property which do not apply equally to other properties in the neighborhood. Staff is of the opinion that this criterion has not been satisfied.

2. State why the granting of this variance is necessary for the preservation and enjoyment of substantial property rights.

The existing house demonstrates that the property has been allowed to develop and the property owners have enjoyed substantial property rights on land zoned for single-family homes since 1986. It is not a property right to build a shade cover that violates minimum setbacks. Also, there are other options that comply with the Zoning Code, such as adding trees or relocating the pool and shade structure farther southeast on the property. Staff is of the opinion that this criterion has not been satisfied.

3. Explain why this variance will not materially be detrimental to persons, property, or the public welfare of the community.

The variance would be a detriment to neighboring properties as they do not legally enjoy, nor have been granted approval to construct shade structures attached to the house that do not abide by zoning regulations. Staff is of the opinion that this criterion has not been satisfied.

PUBLIC/NEIGHBORHOOD NOTIFICATION

This request was noticed in accordance with the requirements of the Chandler Zoning Code.

At the time of this writing, Staff is not aware of any opposition to the request.

SUMMARY

Staff does not support this request. There are no special circumstances applicable to this property that do not apply equally to similar properties in the surrounding area. The requirement to meet minimum setbacks is not a hardship for this property. The property has been substantially developed since the home's original construction in 1986.

Granting a variance for this property would, in Staff's opinion, constitute a special privilege inconsistent with the limitations placed upon other similar properties. There are no special circumstances to this location that would support a finding in favor of this application.

RECOMMENDED ACTION

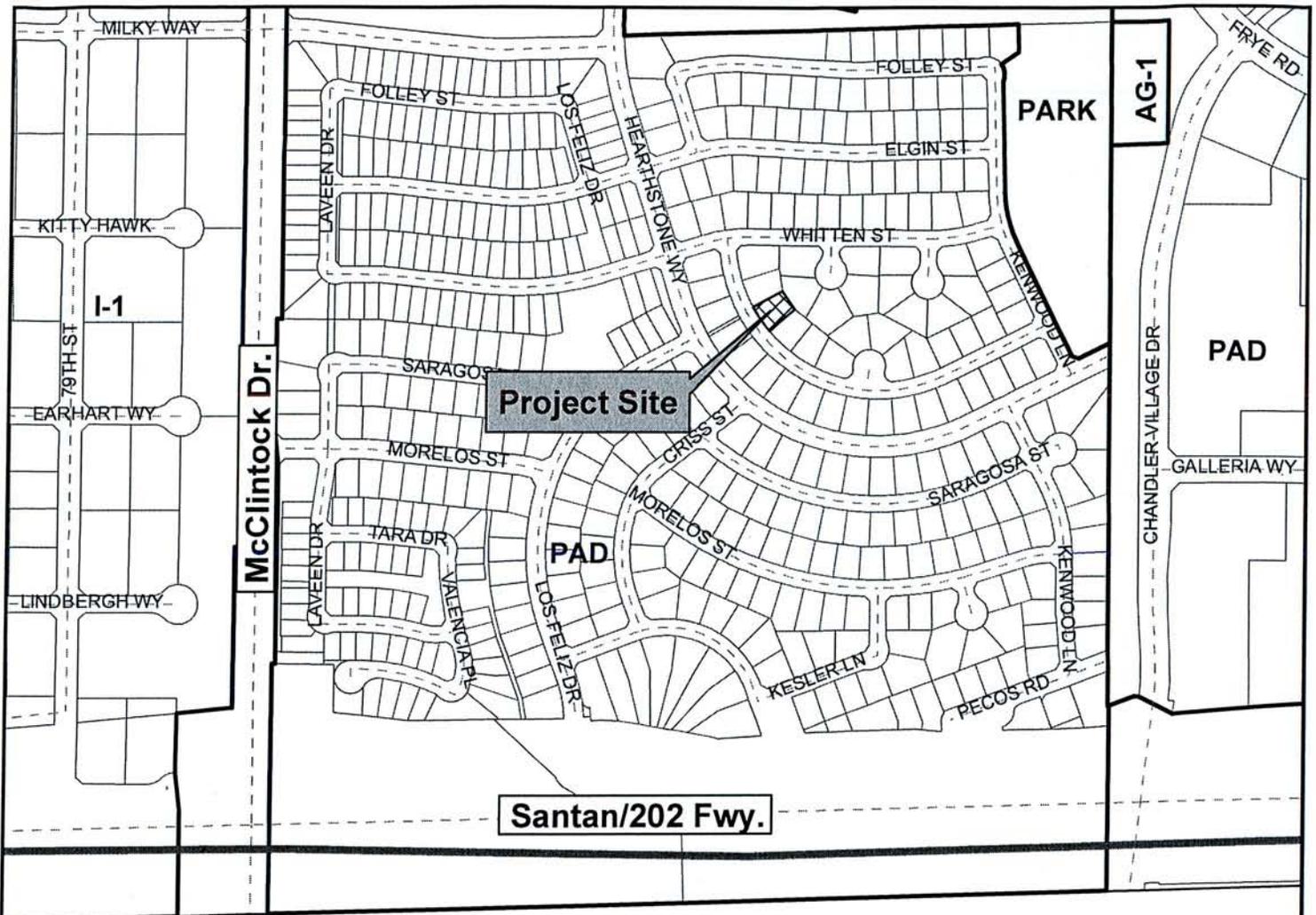
Staff recommends denial of this request.

PROPOSED MOTION

Move to deny variance request VAR12-0006 HARVEY RESIDENCE, as recommended by Staff.

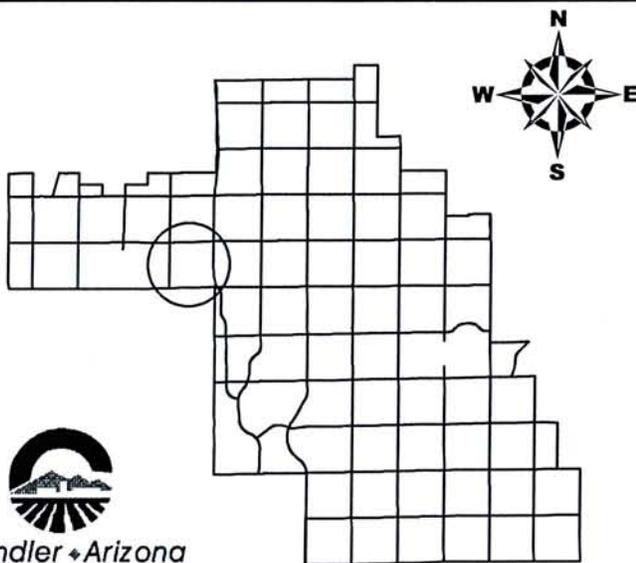
Attachments

1. Vicinity Maps
2. Aerial Close-up
3. Application and Justification
4. Site Plan and Elevations/Calculations
5. Applicant's Photos
6. Powers and Duties



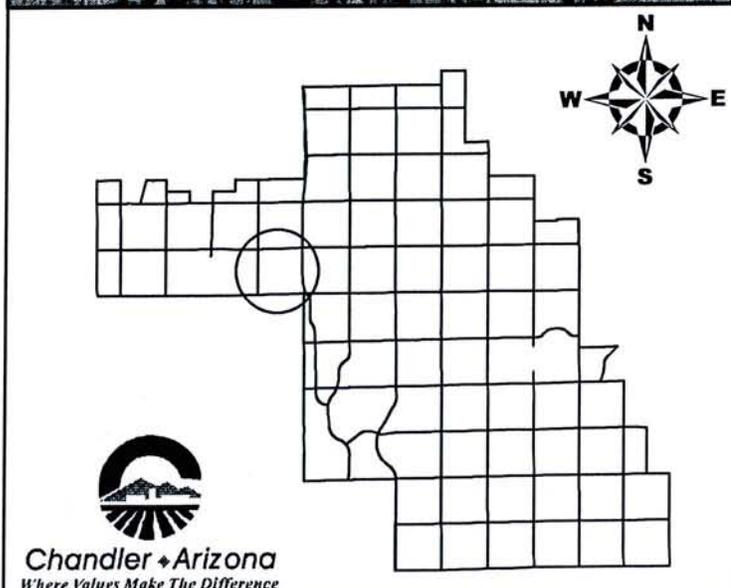
Gila River Indian Community

Vicinity Map

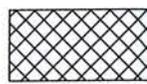


VAR12-0006

**Harvey Residence
3656 W. Fairview Ln.**



Vicinity Map



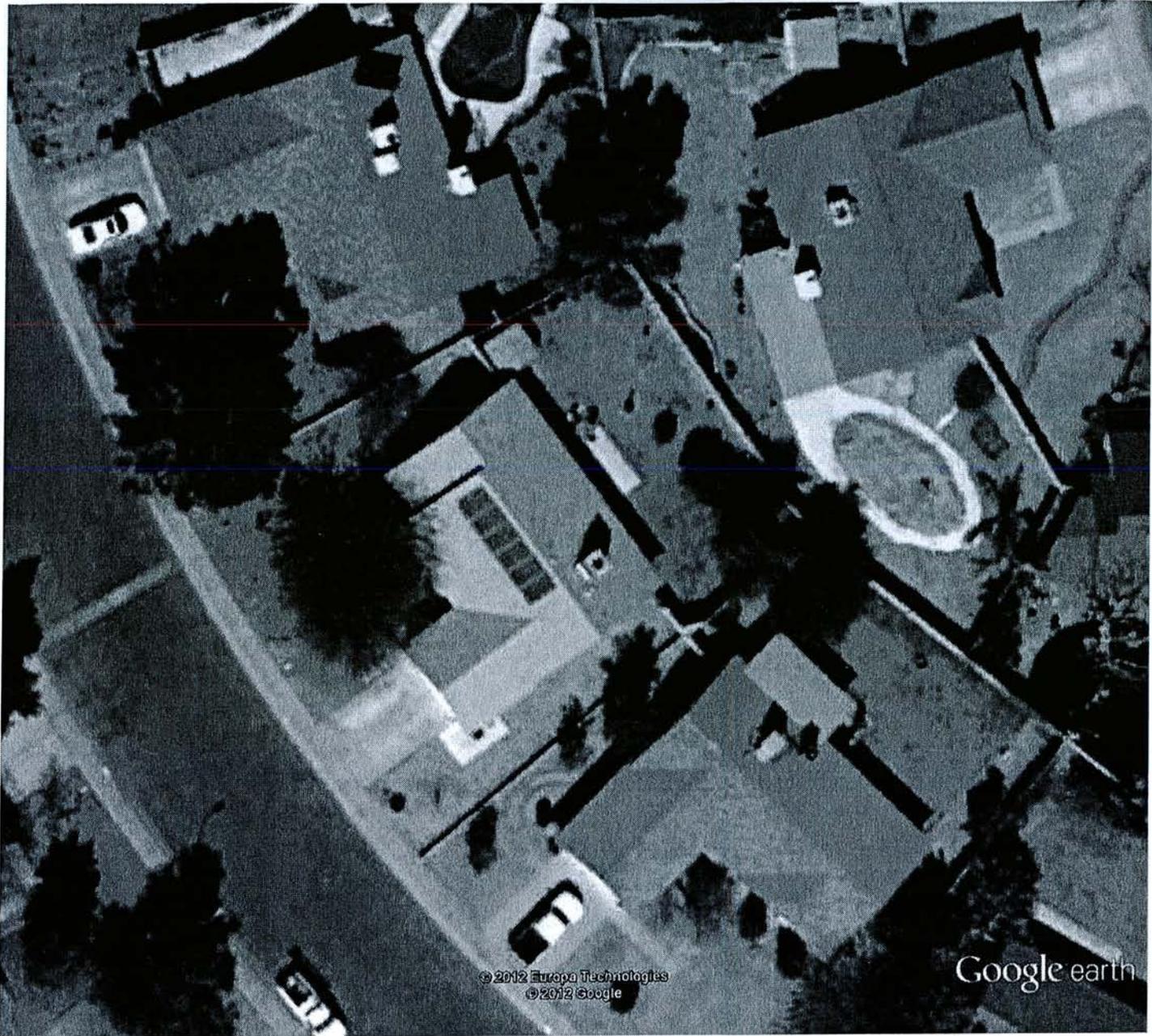
VAR12-0006

**Harvey Residence
3656 W. Fairview Ln.**



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CITY OF CHANDLER 6/20/2012



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Google earth

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JUN 18 REC'D
EP

Variance Request Application

If the property owner is not filing the application, please fill out the attached Letter of Authorization for an applicant or project representative to file the application.

Project or Owner Name Ellis G. Harvey		
Property Location/Address 3656 W Fairview Lane		City, State, Zip Code Chandler, AZ 85226-4924
Type of Variance (waiver) from the Zoning Code you are requesting: We are requesting a variance for the setback requirement of two sail shade support posts which we are proposing to build as an integrated part of an in-ground pool. The pool has a setback requirement of 5 feet while the sail shade support posts have a setback requirement of 10 feet. This variance requests that the required setback for the sail shade support posts be adjusted to 5 feet to match the setback of the proposed pool.		
Is this variance for an existing structure (e.g. fence, pool, etc.)? Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>		
Has the City issued a Notice of Violation? Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/> If yes, please attach a copy of the notice/letter.		
Property Owner Name Ellis G. Harvey		
Mailing Address 3656 W Fairview Lane		Phone Number 480-361-2963 home 480-258-9144 cell
City, State, Zip Code Chandler, AZ 85226-4924		Fax Number
Applicant/Representative Name Ellis G. Harvey		
Mailing Address 3656 W Fairview Lane		Phone Number 480-361-2963
City, State, Zip Code Chandler, AZ 85226-4924		Fax Number
Property Owner or Representative Signature		Date
For City Use		
Date Filed 6-18-12	Development No. VAR12-0006	Planner

Mailing Address:
P.O. Box 4008, MS 401
Chandler, Arizona 85244-4008

Transportation and Development Department
Planning Division
215 E. Buffalo St., Chandler Arizona 85225

Telephone: (480) 782-3000
Fax: (480) 782-3010
www.chandleraz.gov
Form No: UDM-063/Planning
Rev: 6-6-11



Justification for Variance Request

Please answer the following questions fully in order to prove your case to the Board.

1. Explain the special circumstances or conditions that apply to the land, building, or use referred to in the application. The special circumstances cannot be self-imposed by the property owner.

The proposed in-ground pool is to be constructed in an area that is only about 23 feet wide. As part of this project, we would like to construct a sail shade to cover a portion of the narrow pool. We have been informed that the setback requirement for the pool is 5 feet but the 2 sail shade support posts that we are proposing have a setback requirement of 10 feet. Because we only have a narrow area to work with, observing the 10 foot setback requirement would put the support posts near the center of the proposed pool and would not shade a significant portion of the pool. We are **not** requesting a variance to construct a wall or a building 5 feet from our property line, just two 4.5 inch support posts. The proposed sail shade would connect to 2 points on the existing patio cover.

2. State why the granting of this variance is necessary for the preservation and enjoyment of substantial property rights.

The construction of sail shades is relatively new and the requirements vary from city to city. We believe that the setback requirement of 10 feet should not be applied to sail shade support posts which are constructed as an integrated part of a pool design; especially in Arizona where summers can be extremely hot. Although the water of a pool may feel cold, direct sunlight can burn unprotected skin in minutes. We would like to be able to enjoy our pool in the middle of the day without being forced to hide from the sun by wear hats and sunscreen to prevent skin damage (which could lead to premature aging and/or cancer). Granting this variance will allow us to construct a pool that we can truly enjoy. Denying the variance will harm our substantial property right to swim in a pool without being burned by the Arizona sun.

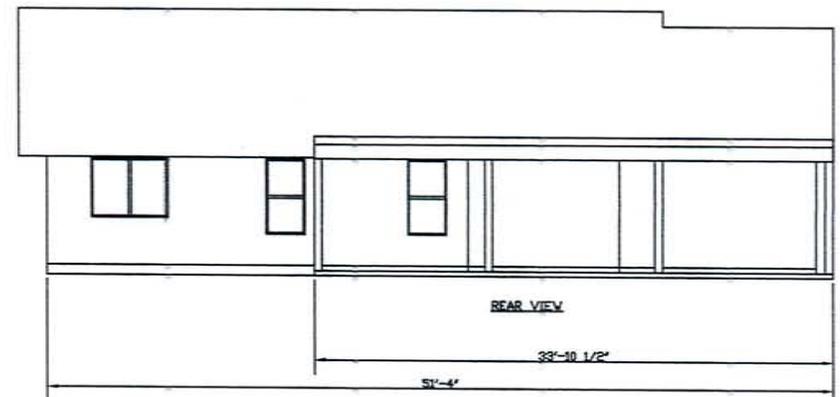
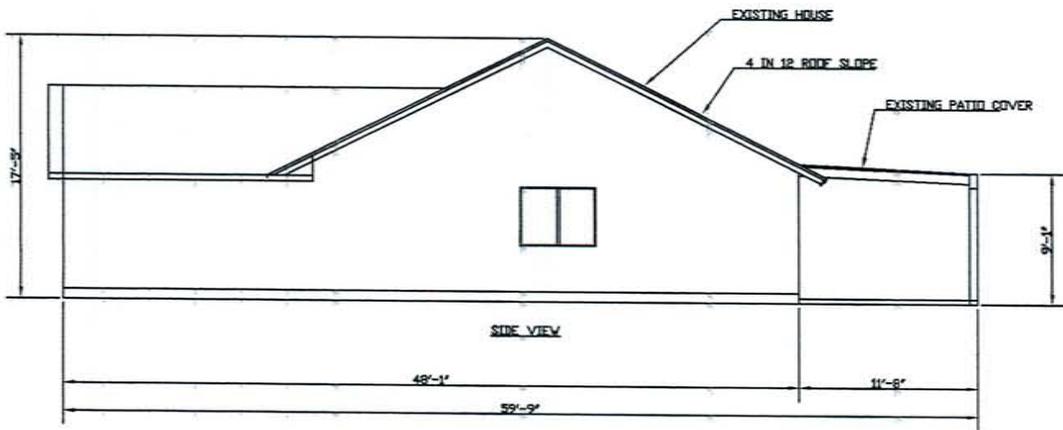
Justification for Variance Request (Cont'd)

3. Explain why this variance will not materially be detrimental to persons, property, or the public welfare of the community.

The proposed plan is to construct a pool with a permanent, integrated, professionally installed sail shade. The two posts we are proposing will be grounded (bonded) to the pool steel to prevent any chance of electrocution in the event that the pole becomes accidentally energized. The lower portion of the posts will also be padded to prevent injury.

The sail shade itself will not pose a danger to the community. The shade will be designed and installed by professional contractors who will coordinate with the pool builder to assure that the project is done correctly. All of the necessary engineering analyses will be performed during the permitting process to assure that the sail shade and its support structure are structurally sound.

Allowing this variance will *improve* the value of the property while enhancing its functionality. Rather than being detrimental, granting this variance will improve the usefulness of the property and will help protect the community (ourselves, our friends and family that may occasionally use the pool) by providing shade and blocking UV rays.



NOTES:

GOVERNING BUILDING CODES ALL CONSTRUCTION SHALL COMPLY WITH THE FOLLOWING CODES AND AMENDMENTS PER THEIR ADOPTING ORDINANCES:

- 2009 INTERNATIONAL BUILDING CODE
- 2009 INTERNATIONAL RESIDENTIAL CODE
- 2009 INTERNATIONAL MECHANICAL CODE
- 2008 NATIONAL ELECTRICAL CODE
- 2009 INTERNATIONAL PLUMBING CODE
- 1. ALL PRODUCTS LISTED BY ENGINEER, NUMBERED SHALL BE INSTALLED PER THE REPORT AND MANUFACTURER'S WRITTEN INSTRUCTIONS.
- 2. EXTERIOR WALL, BUTTIN SILL PLATES, SHALL BE PRESSURE TREATED OR EQUAL, AND SHALL BEAR/EXTEND MINIMUM 6" ABOVE ADJACENT FINISH GRADE. (R201.4) AMD.
- 3. PROVIDE FIRE SPINKLER SYSTEM. CODE 903.2 AS AMED.
- 4. MISCELLANEOUS SITE STRUCTURES, SWIMMING POOLS, SPAS, FENCES, SITE WALLS, RETAINING WALLS, AND GAS STORAGE TANKS REQUIRE SEPERATE PERMITS.
- 5. MINIMUM ONE REQUIRED EXIT FOR AN OCCUPANT LOAD OF LESS THAN 10. (R201.4)
- 6. ALL EXITS TO BE OPERABLE FROM THE INSIDE WITHOUT USE OF A KEY OR SPECIAL KNOWLEDGE.
- 7. DOORS LEADING INTO HOUSE FROM GARAGE SHALL BE SELF-CLOSING AND TIGHT FITTING WITH GASKETS AND SWEEP. (R201.4) AMD.
- 8. EXTERIOR WALL PENETRATIONS BY PIPES, DUCTS, OR CONDUITS SHALL BE CALKED. (R201.6)
- 9. PROVIDE ROOF ATTIC VENTILATION PER (R202.6).
- 10. MINIMUM INSULATION SHALL BE:
 - A. WALLS WITH 1/2" GLAZING OR LESS REQUIRE MINIMUM INSULATION OF R-30 CEILINGS, AND R-15 WALLS. TABLE R0201.1 AMD.
 - B. WALLS WITH 25% GLAZING OR LESS REQUIRE MINIMUM INSULATION OF R-38 CEILINGS, AND R-15 WALLS. TABLE R0201.1 AMD.
- 11. LUMBER SHALL BEAR AN APPROVED GRADING STAMP. (R202.1)
- 12. FIRE BLOCKING SHALL COMPLY WITH (R202.2) AND BE MAXIMUM 10 FT. O.C. HORIZONTAL OR VERTICAL.
- 13. FLOOR-CEILING ASSEMBLIES WITH A CONCEALED SPACE IN EXCESS OF 1000 SQUARE FEET SHALL HAVE DRAFT STOPS INSTALLED THAT DIVIDE THE CONCEALED SPACE INTO APPROXIMATELY EQUAL AREAS. DRAFT STOPPING MATERIAL SHALL COMPLY WITH (R202.12).
- 14. WALLS AND CEILINGS OF ENCLOSED USEABLE SPACE UNDER INTERIOR STAIRWAYS SHALL BE PROTECTED ON THE ENCLOSED SIDE. (R202.12)
- 15. GYPSUM BOARD APPLIED TO A CEILING SHALL BE 1/2" WHEN FRAMING MEMBERS ARE 16" O.C. OR 5/8" WHEN FRAMING MEMBERS ARE 24" O.C. OR USE LABELED 1/2" SAG-RESISTANT GYPSUM CEILING BOARD. TABLE R0202.5 (4).
- 16. SHOWER AREA WALLS SHALL BE FINISHED WITH A SMOOTH, HARD, NON-ABSORBANT SURFACE, SUCH AS CERAMIC TILE, TO A HEIGHT OF NOT LESS THAN 72 INCHES ABOVE THE DRAIN INLET. WHEN GYPSUM WALLBOARD IS USED AS A BASE FOR TILE OR WALL PANELS, WATER-RESISTANT GYPSUM WALLBOARD SHALL BE USED. WATER-RESISTANT GYPSUM BOARD SHALL NOT BE USED OVER A VAPOR BARRIER, IN AREAS OF HIGH HUMIDITY OR IN CEILINGS WHERE THE FRAME SPACING EXCEEDS 12" ON CENTER FOR 1/2" GYPSUM AND 16" O.C. FOR 5/8" GYPSUM. (R202.4.2)
- 17. PLUMBING FIXTURES SHALL COMPLY WITH THE FOLLOWING CONSERVATION REQUIREMENTS: UPC 402, AND:
 - A) WATER CLOSERS-TANK TYPE = 1.6 GALS./FLUSH.
 - B) SHOWER HEADS 2.75 GAL./MINUTE.
 - C) FAUCETS- 3.0 GAL./MINUTE, PROVIDE AERATOR.

- 18. WATER TREATMENT SYSTEMS- EQUIPED WITH AUTOMATIC SHUTOFF TO PREVENT CONTINUOUS FLOW WHEN NOT IN USE.
- 19. EVAPORATIVE COOLERS- MUST HAVE RECIRCULATING PUMPS.
- 20. PROVIDE AN EXPANSION TANK AT THE WATER HEATER IF A BACKFLOW PREVENTER IS ON OR TO BE INSTALLED ON THE WATER LINE OR AT THE METER. UPC SECTION 600.5.
- 21. SHOWERS AND TUB-SHOWER COMBINATIONS SHALL BE PROVIDED WITH INDIVIDUAL CONTROL VALVES OF THE PRESSURE-BALANCE OR THERMOSTATIC MIXING VALVE TYPE. UPC SECTION 403.7.
- 22. DOMESTIC DISHWASHING MACHINES CONNECTED TO A DISPOSER SHALL HAVE THE DISCHARGE INSTALLED AS HIGH AS POSSIBLE, NOT LOWER THAN 2" ABOVE THE FLORED SOH OF THE SINK. UPC 807.4.
- 23. REGISTERS, DIFFUSERS AND GRILLES SHALL BE MECHANICALLY FASTENED TO RIGID SUPPORTS OR STRUCTURAL MEMBERS ON AT LEAST TWO OPPOSITE SIDES IN ADDITION TO BEING CONNECTED TO THE DUCTWORK THEY SERVE.
- 24. THE CLOTHES DRYER SHALL BE PROVIDED WITH A 4 INCH DIAMETER EXHAUST DUCT TO THE EXTERIOR AND SHALL NOT EXCEED A TOTAL LENGTH OF 25 FEET, UNLESS AN ENGINEERED DUCT SYSTEM IS PROVIDED. (M325.3) THE DUCT SHALL TERMINATE NOT LESS THAN 3 FEET FROM THE PROPERTY LINE OR FROM OPENINGS INTO A BUILDING. UMC SECTION 504.6.
- 25. PROVIDE TO-RATED RECESSED LIGHT FIXTURES INSTALLED ON INSULATED CEILINGS. (M325.3-300.4)-6660.
- 26. FIXTURES LOCATED IN BAMP OR WET LOCATIONS SHALL BE "LISTED" TO BE SUITABLE FOR SUCH LOCATION. (M325.3)-410-4).
- 27. PROVIDE GFI RECEPTACLES WITHIN 6' OF ALL LAVS, SINKS, AND BASINS. (M325.3)-6).
- 28. PROVIDE GFI RECEPTACLES AT ALL EXTERIOR, BATHROOM AND GARAGE LOCATIONS. (M325.3)-6, -32).
- 29. PROVIDE A WALL MOUNTED GFCI PROTECTED RECEPTACLE OUTLET WITHIN 36" OF A BATHROOM OR POWDER ROOM LAVATORY. (M325.3)-6).
- 30. ALL CIRCUITS SUPPLYING RECEPTACLE OUTLETS IN BEDROOMS SHALL BE AFCI PROTECTED. (M325.3)-2).
- 31. RECEPTACLE OUTLETS SHALL BE INSTALLED SO THAT NO POINT ALONG THE FLOOR LINE IN ANY WALL SPACE IS MORE THAN 6 FEET, MEASURED HORIZONTALLY, FROM ANY OUTLET IN THAT SPACE, INCLUDING ANY WALL SPACE 2 FEET OR MORE IN WIDTH. (M325.3)-2 (4).
- 32. BATHROOM RECEPTACLE OUTLETS SHALL BE SUPPLIED BY AT LEAST ONE 20-AMPERE BRANCH CIRCUIT. SUCH CIRCUITS SHALL HAVE NO OTHER OUTLETS. (M325.3)-2).
- 33. PROVIDE A SEPERATE 20-AMPERE BRANCH CIRCUIT TO THE LAUNDRY. (M325.3)-11, 210-26(F), 220-416(4)).
- 34. PROVIDE A MINIMUM OF TWO 20 AMP SMALL APPLIANCE BRANCH CIRCUITS FOR THE KITCHEN/DINING/BREAKFAST. (M325.3)-11, 210-26(4)(2), 220-166(4)(2).
- 35. THE TWO OR MORE 20 AMPERE BRANCH CIRCUITS SHALL HAVE NO OTHER OUTLETS, EXCEPT THE RECEPTACLE INSTALLED SOLELY FOR ELECTRIC SUPPLY TO THE ELECTRIC CLOXK IN THE KITCHEN/DINING/BREAKFAST AREAS OR RECEPTACLES FOR SUPPLEMENTAL EQUIPMENT AND LIGHTING FOR GAS-FIRED RANGES, OVENS OR COUNTER MOUNTED UNITS. (M325.3)-11, 210-26(4)(2)).
- 36. RECEPTACLE OUTLETS FOR RANGES AND CLOTHES DRYERS SHALL BE A 3 POLE WITH GROUND TYPE, FOUR-WIRE GROUNDING TYPE, FLEXIBLE CORDS WILL BE REQUIRED FOR CONNECTION OF RANGES AND CLOTHES DRYERS. THE BONDING JUMPER SHALL NOT BE CONNECTED BETWEEN THE NEUTRAL TERMINAL AND THE FRAME OF THE APPLIANCE. (M325.3)-14(2).
- 37. PROVIDE A CONCRETE ENCASED GROUNDING ELECTRODE OF NOT LESS THAN 20 FEET OF #4 BARE COPPER.
- 38. PROVIDE BONDING TO THE WATER PIPING, GAS AND METAL BUILDING SYSTEMS. (M325.3)-14 FOR 200 AMP SERVICES. (M325.3)-30, 250-12(4).
- 39. ALL METAL PIPING SYSTEMS, METAL PARTS OF ELECTRICAL EQUIPMENT, AND PUMP MOTOR ASSOCIATED WITH THE HYDRO MASSAGE TUB SHALL BE BONDED TOGETHER USING A COPPER BONDING JUMPER, INSULATED.
- 40. COVER, OR BARE, NOT SMALLER THAN #8 SOLID METAL PARTS OF LISTED EQUIPMENT INCORPORATING AN APPROVED SYSTEM OF DOUBLE INSULATION AND PROVIDING A MEANS FOR GROUNDING INTERNAL NON-ACCESSIBLE, NON-CURRENT CARRYING METAL PARTS SHALL NOT BE BONDED. (M325.3)-75).

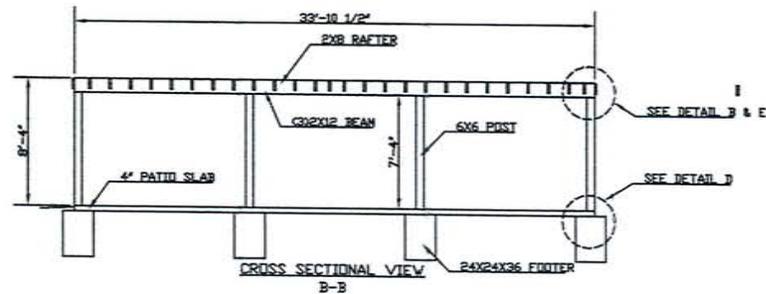
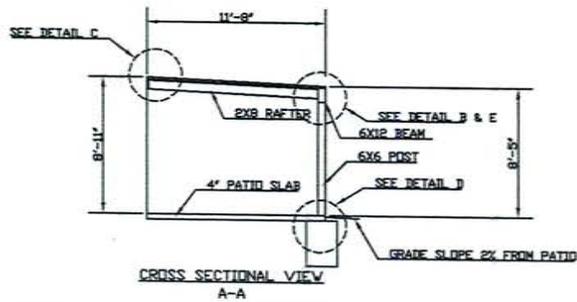
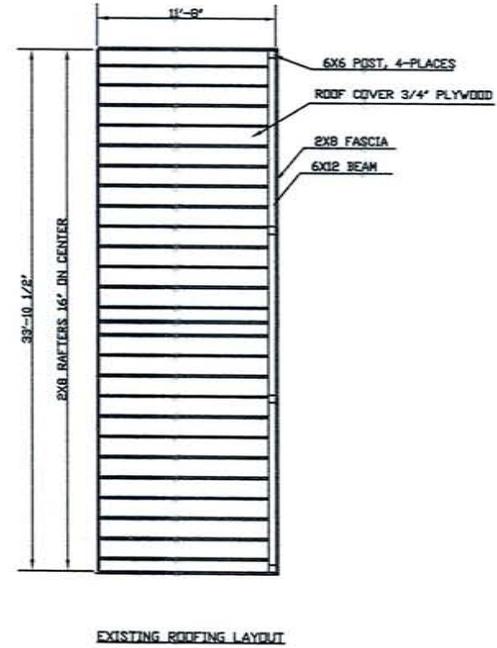
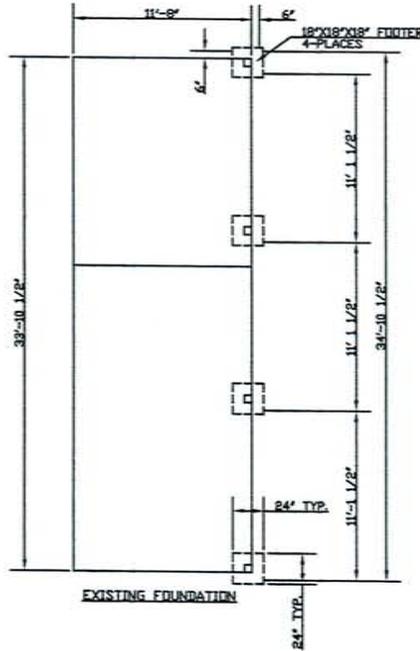
ELLIS HARVEY	
OWNER	PROJECT
SHEET A	SHEET 1 OF 3
SCALE 1" = 8'	DATE 1/20/12
DRAWN BY EGH	CHECKED BY EGH
HARVEY_BUILD	
ELEVATIONS AND NOTES	

NOTES:
 1) THIS STANDARD PLAN IS NOT APPROVED FOR LOCATIONS WITHIN 2' OF AN ADJACENT PROPERTY LINE, USC TABLE 5-A.
 2) PROJECTIONS SHALL NOT EXCEED MORE THAN 22" INTO THE AREAS WHERE OPENINGS ARE PROHIBITED (SEC 593.2.D).
 3) OVERHANGS AND PROJECTIONS WITHIN 2' OF THE PROPERTY LINE SHALL BE OF ONE HOUR FIRE RESISTIVE CONSTRUCTION.
 4) EAVES OVER REQUIRED BEYOND EGRESS WINDOWS SHALL NOT BE LESS THAN 30" FROM THE SIDE AND REAR PROPERTY LINES, (SEC 1204).

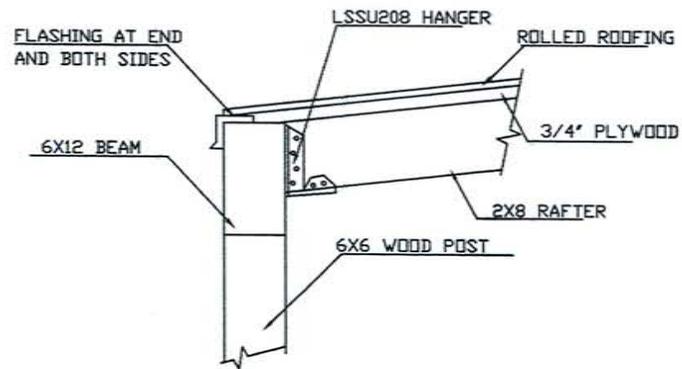
SAIL SHADE
 50. FT. 395

HEADER SCHEDULE

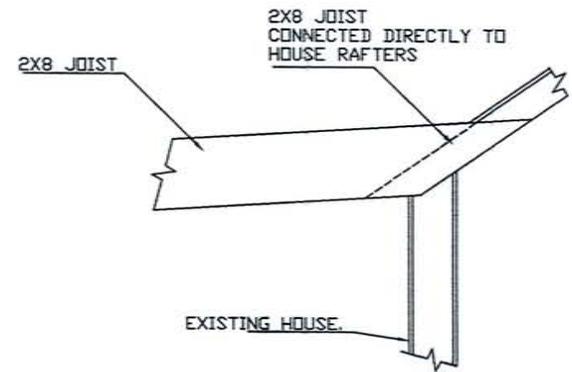
HEADER SIZE	OPENING SIZE
2X12	8'-1" TO 12'-0"



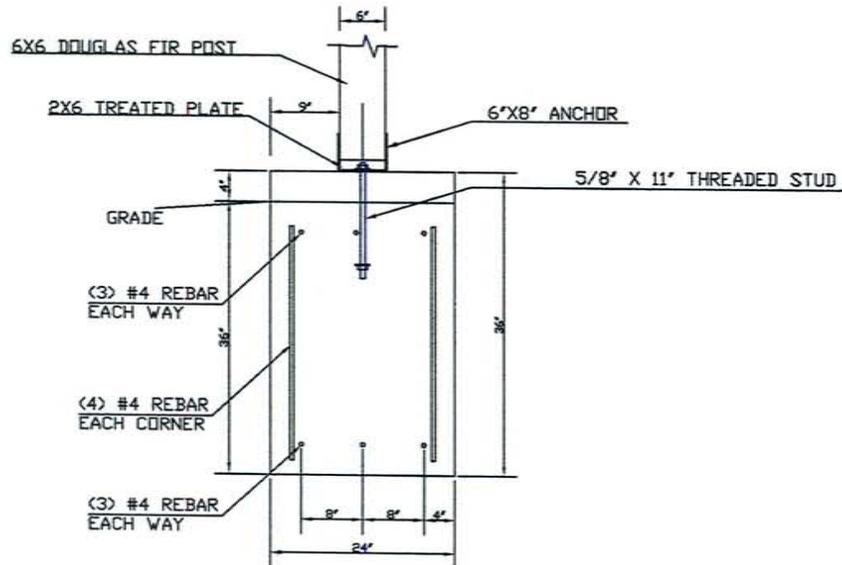
OWNER: ELLIS HARVEY
 PROJECT: 3800 W. PARKWAY LANE
 CHANDLER, AZ 85226
 DATE: 1/20/12
 DRAWN BY: EQM
 CHECKED BY: EQM
 SHEET NO: HWNEY_BUILD
 SHEET 3 OF 3
 TITLE: CROSS SEC AND PLANS



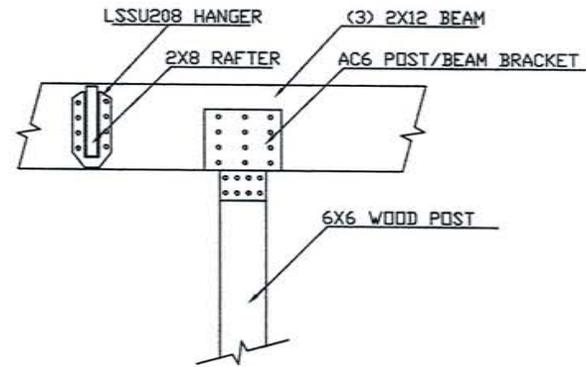
B: 1/2 IN 12 ROOF & FLASHING



C: EXISTING JOIST TO RAFTER DETAIL

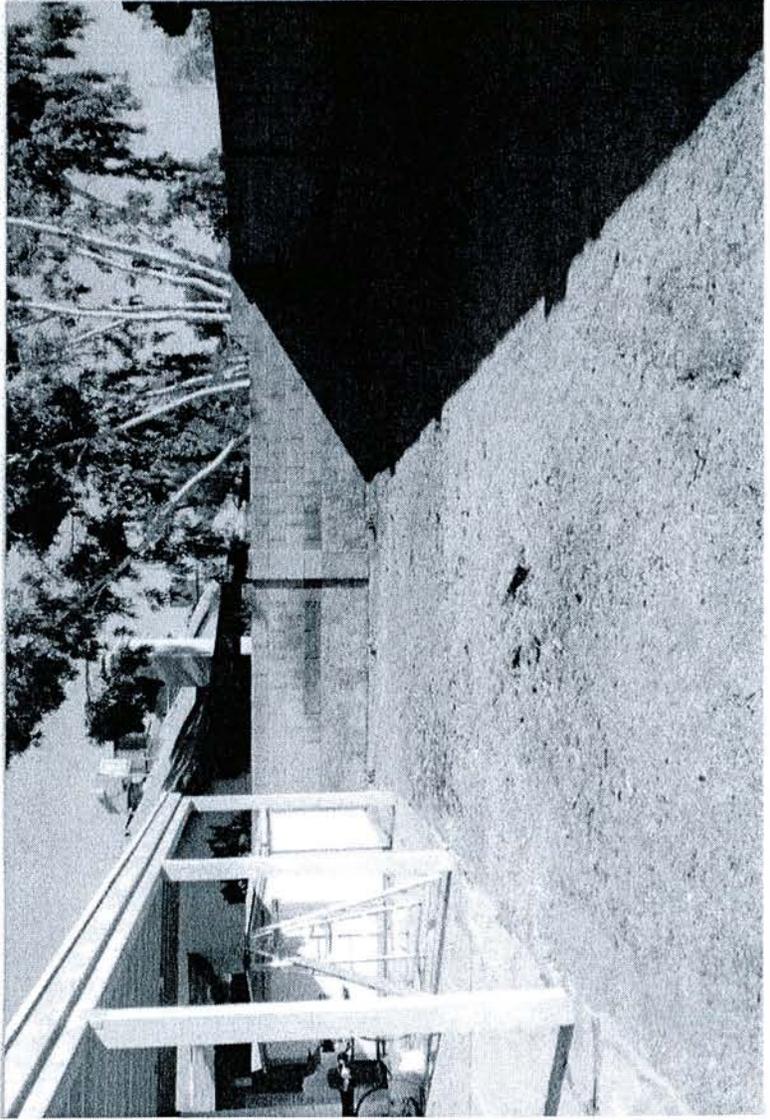
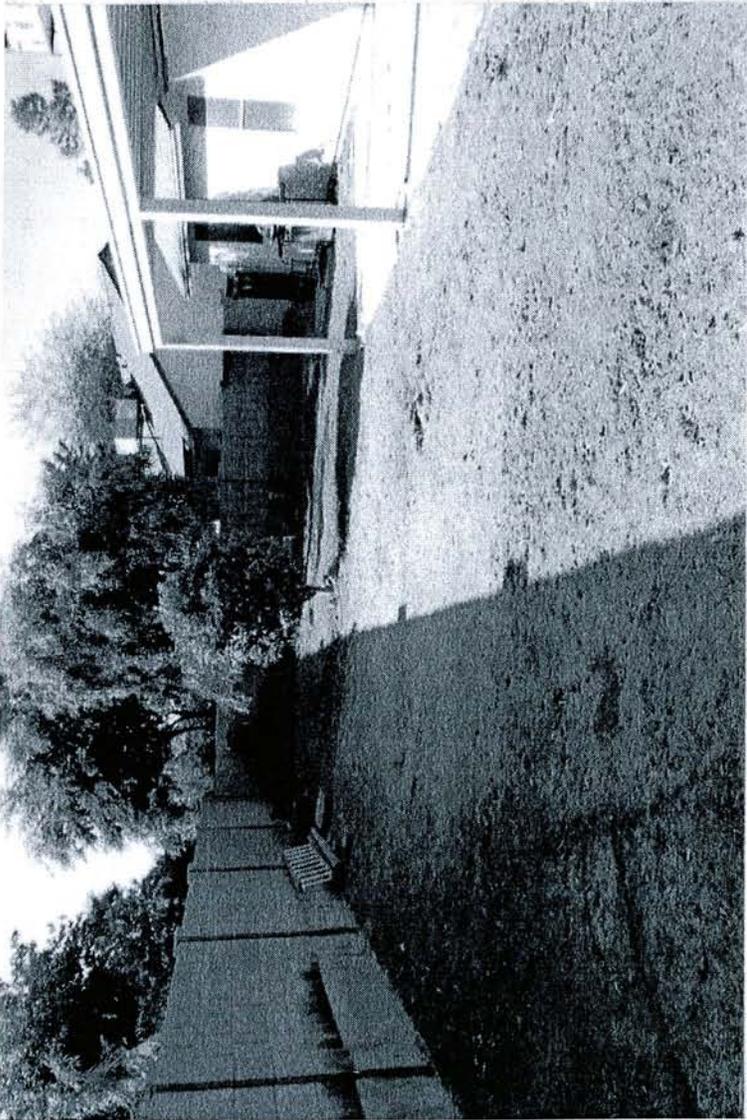
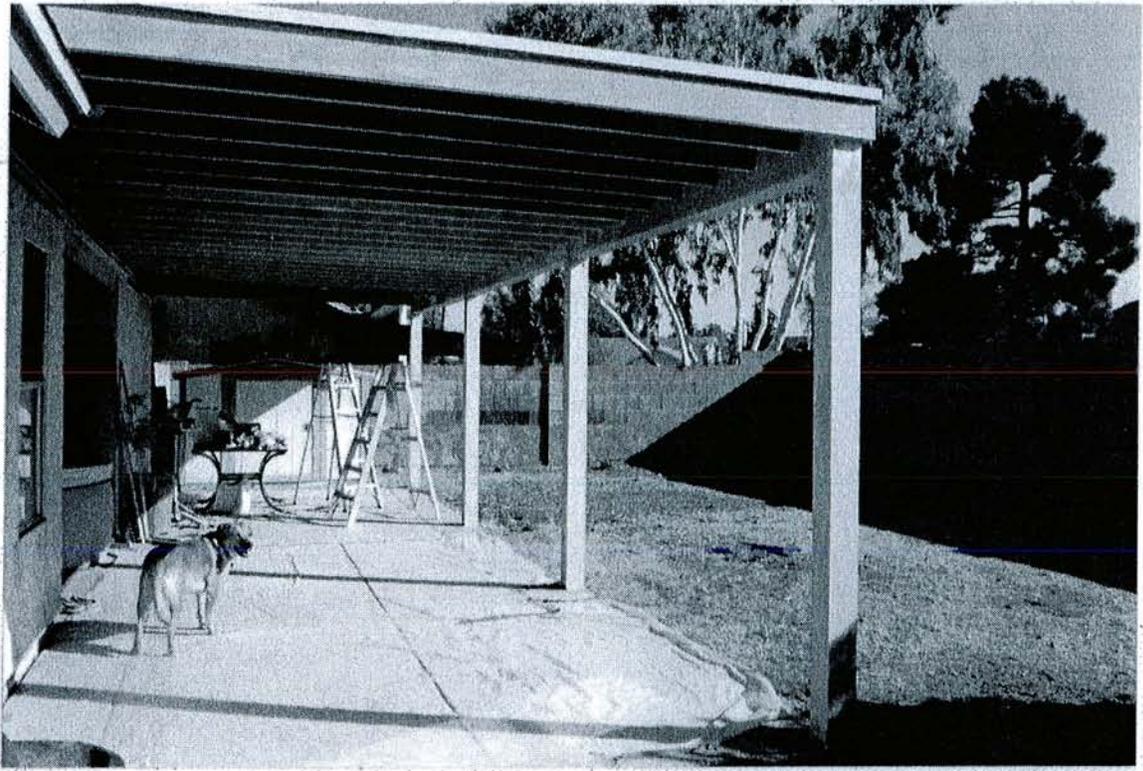


D: EXISTING COLUMN FOOTING



E: EXISTING POST AND RAFTER TO BEAM

OWNER	ELLIS HARVEY
DESIGNER	JOHN W. FURNACE, LISC CHANDLER, AZ 85226
DATE	1/20/12
SCALE	AS SHOWN
CHECKED BY	ECH
PROJECT NO.	WINDY_BUILD
SHEET	3 OF 3
TITLE	CONSTRUCTION DETAILS



BOARD OF ADJUSTMENT

CHAPTER 35

35-2502. Powers and duties.

The Board of Adjustment shall have the following powers and duties:

(1) Adopt rules of procedure not inconsistent with the provisions of this Code for the conduct of its business and procedure.

(2) Hear and decide all appeals that may be taken by any person or any Officer, Department, Board or Division of the City when there is an alleged error in any such order, requirement or decision made by the Zoning Administrator in the enforcement of the provisions of this Code.

(3) Reverse or affirm in whole or in part or modify the order or decision as ought to be made, and [to] that end shall have the powers of the officer for whom the appeal is taken.

(4) Determine and establish the true location of district boundaries in any disputed case.

(5) Interpret any provision of the Zoning Code as it relates to a specific use of land or structure.

(6) In specific cases, authorize upon request such variances from the provisions of this Code that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary property hardships. A variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which such property is located.

(a) A variance shall not be granted unless the Board of Adjustment shall find upon sufficient evidence:

1. There are special circumstances or conditions applying to the land, building or use referred to in the request;

2. The granting of the variance is necessary for the preservation and enjoyment of substantial property right; and

3. The granting of the variance will not materially be detrimental to persons, property or to the public welfare of the community.

(b) The Board of Adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning code provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.