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JUN 10 2009



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**

**Planning and Development – BA Memo No. 09-012**

**DATE:** JUNE 1, 2009

**TO:** BOARD OF ADJUSTMENT

**THRU:** JEFF KURTZ, ACTING PLANNING AND DEVELOPMENT DIRECTOR *JK*  
KEVIN MAYO, ACTING PLANNING MANAGER *KM*

**FROM:** BILL DERMODY, SENIOR CITY PLANNER *BD*

**SUBJECT:** VAR09-0008 PAREKH RESIDENCE

**Requests:** Variance from the Zoning Ordinance to allow encroachment into the minimum side yard setback for an existing accessory structure, or alternatively to allow the structure to be considered a “storage shed” despite its divergence from the Zoning Code regulations

**Applicant:** Jason Snell

**Location:** 4803 W. Morelos Street, north and west of the Loop 202 Santan Freeway and McClintock Drive

**Property Owners:** Aashish & Shruti Parekh

**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 an accessory structure used as a storage shed to remain. The structure encroaches approximately 10” into the minimum 5’ side yard setback, leaving a setback of 4’-2”. At a size of approximately 308 square feet, a height of 11’-7”, and with electricity provided to the structure, it does not meet the Zoning Code

definition of a "storage shed" (120 square feet, 7' height, no utilities). A storage shed that meets the Zoning Code definition does not need to have any setback from property lines.

The application also suggests a couple of alternatives including (1) the electricity and height exceptions be granted to the "storage shed" definition while the size is reduced to 120 square feet or (2) the height exception be granted while the size is reduced and electricity is eliminated. Neither alternative improves the setback situation.

The property, which contains a single-family home, is located within the Park at Twelve Oaks Unit One subdivision, north and west of the Loop 202 Santan Freeway and McClintock Drive. The property is across the street from a park and is otherwise surrounded by other single-family homes in the subdivision. Most lots in the subdivision range from approximately 6,400 to 6,700 square feet. Cul-de-sac lots range from approximately 7,800 to 15,000 square feet. The 2,021 square foot house was constructed in 1993 on one of the largest lots in the subdivision of 10,306 square feet.

The existing accessory structure was constructed without building permits by a previous property owner. It is air-conditioned and lit and was previously used as a hobby shop. Though a formal citation has not been issued, Code Enforcement has been pursuing the infraction since March 2008 when a complaint was filed. The property changed ownership in December 2008.

The application also refers to a variance for a 5'-8" separation from the main house. This is a building code issue that cannot be granted a variance through this process. The applicant must go through a different board, the Board of Appeals, for exceptions to the building code.

### **CODE REQUIREMENTS**

Setbacks in the Park at Twelve Oaks Unit One 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 side yard setback on the side in question is 5' for accessory buildings (it is 10' on the street side).

### **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 10,306 square foot lot is one of the largest in the neighborhood. The lot's pie shape is not unique for the area. The only special circumstance is that the lot has a very large pool that takes up most of the rear yard. However, this is a self-imposed circumstance that does not negatively affect the property's enjoyment. 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 owner has enjoyed substantial property rights since the house's construction in 1993. It is not a property right to build an accessory structure that violates the minimum side yard setback. If a storage-type structure like this is desired, it could be reconstructed so that it is attached to the house and meets minimum setbacks. There is also some room on the other side (east side) of the house for such a structure. 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 an accessory structure that does not meet minimum setbacks. 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.

Two neighbors, including the next door neighbor to the west, have contacted Staff to express their support for the application. A third neighbor has expressed opposition because the shed is too tall and it would be bad precedent.

### **SUMMARY**

Staff does not support this request. There are no special circumstances applicable to this property that are hardships that do not apply equally to similar properties in the surrounding area. The requirement to meet minimum setbacks for accessory structures is not a hardship for this property. The property has been substantially developed, with the property owner enjoying development rights since 1993 with the home's original construction.

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 unique conditions to this location that would support a finding in favor of this application.

**RECOMMENDED ACTION**

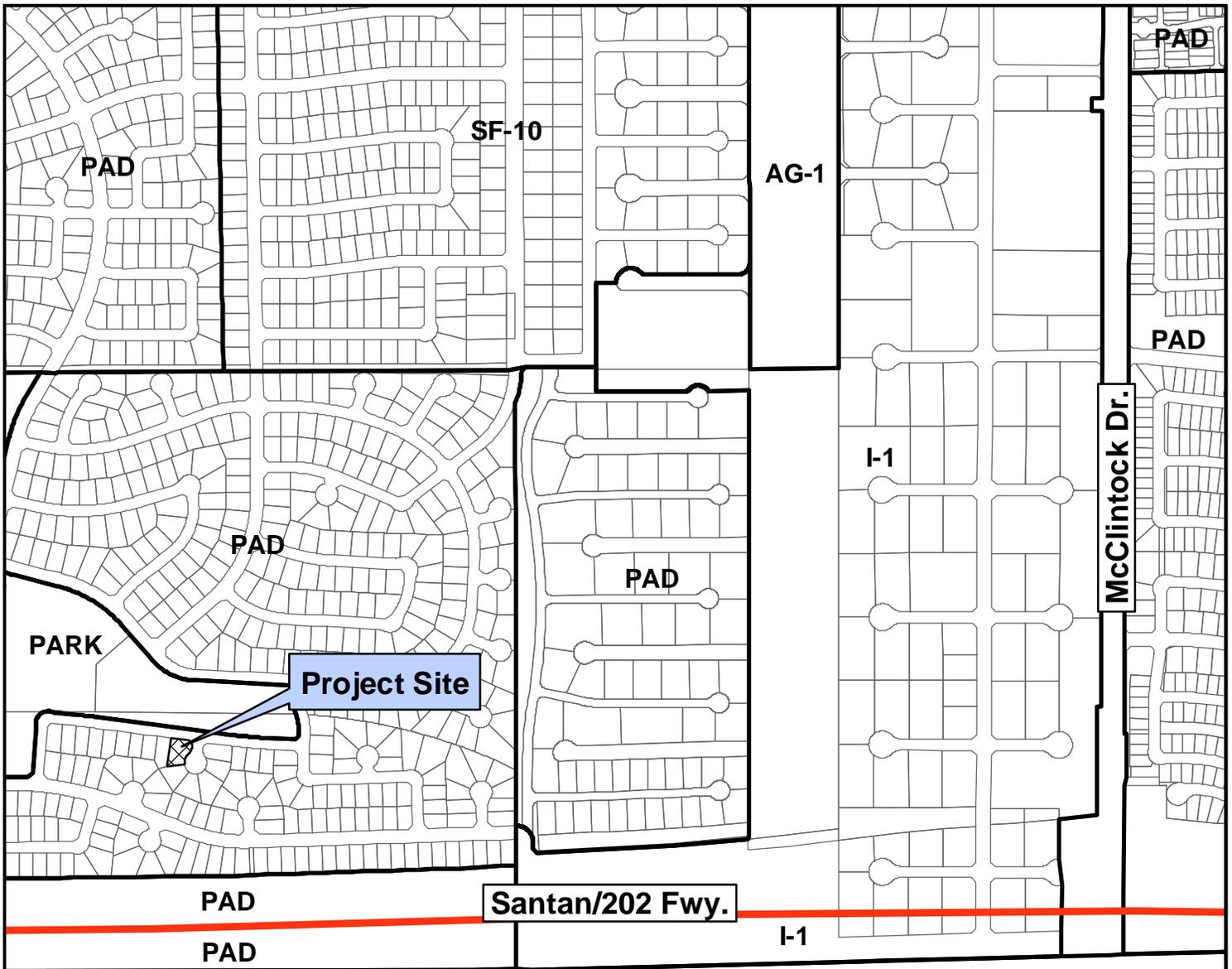
Staff recommends denial of this request.

**PROPOSED MOTION**

Move to deny Variance request VAR09-0008 PAREKH RESIDENCE, as recommended by Staff.

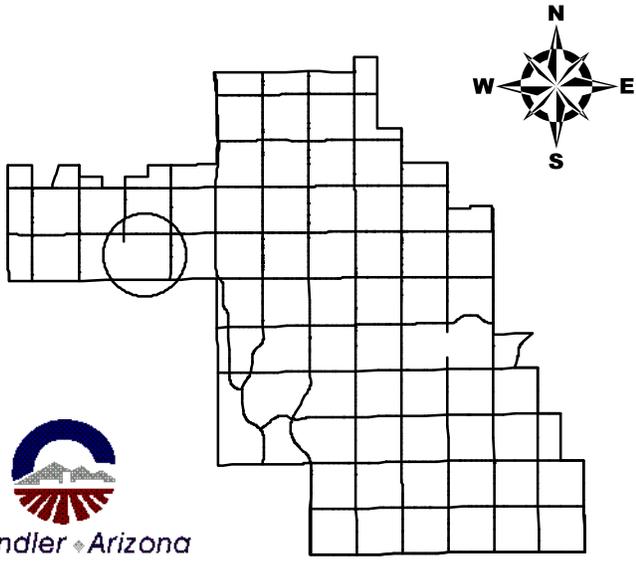
**Attachments**

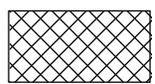
1. Vicinity Map
2. Aerial Close-up
3. Site Plan
4. Applicant Photos
5. Application and Narrative
6. Powers and Duties



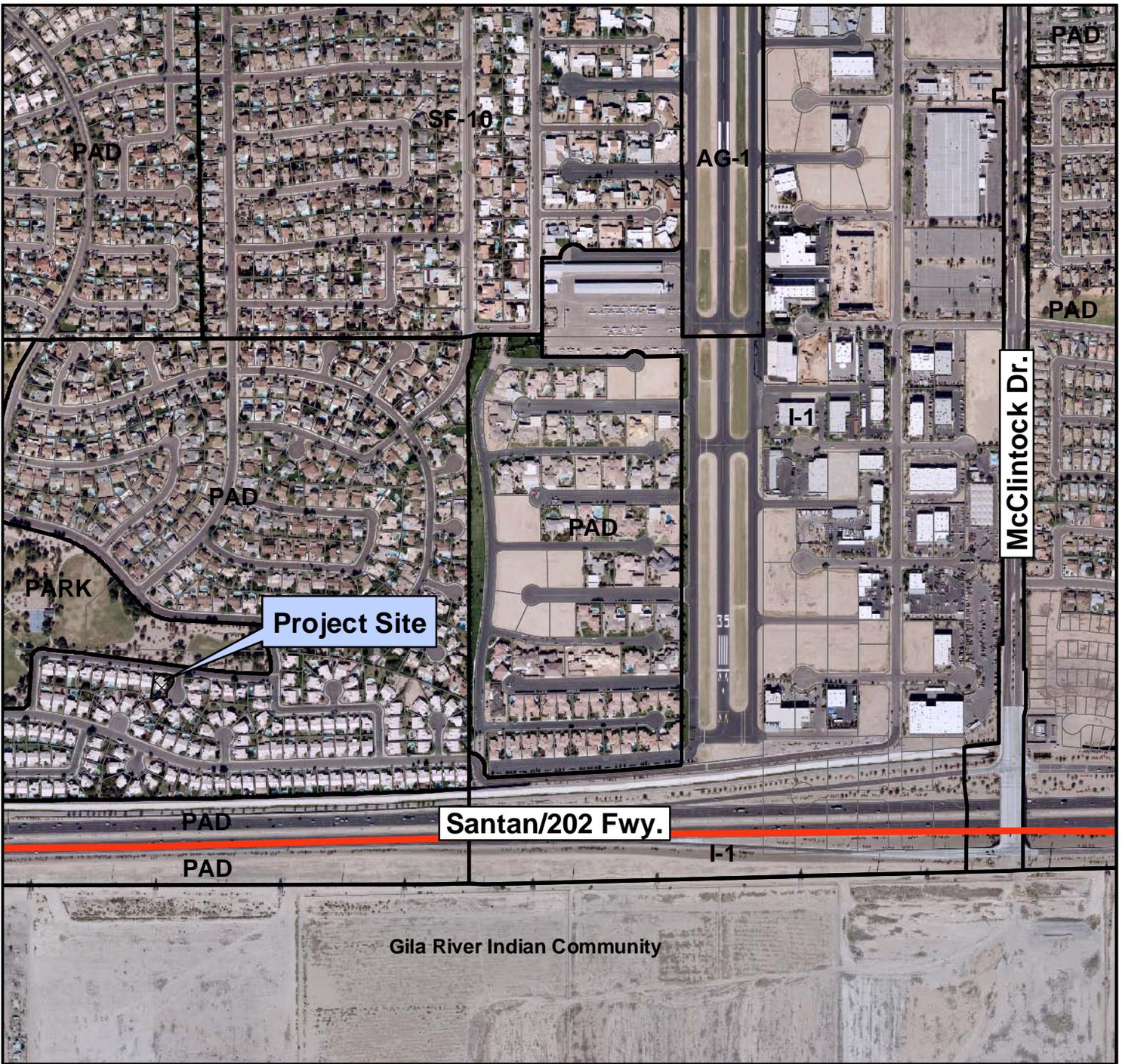
Gila River Indian Community

**Vicinity Map**

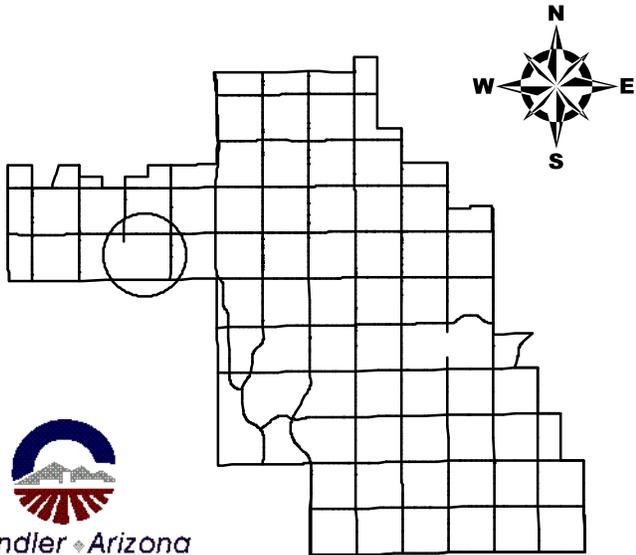


 **VAR09-0008**  
**Parekh Residence**  
**4803 W. Morelos St.**





## Vicinity Map



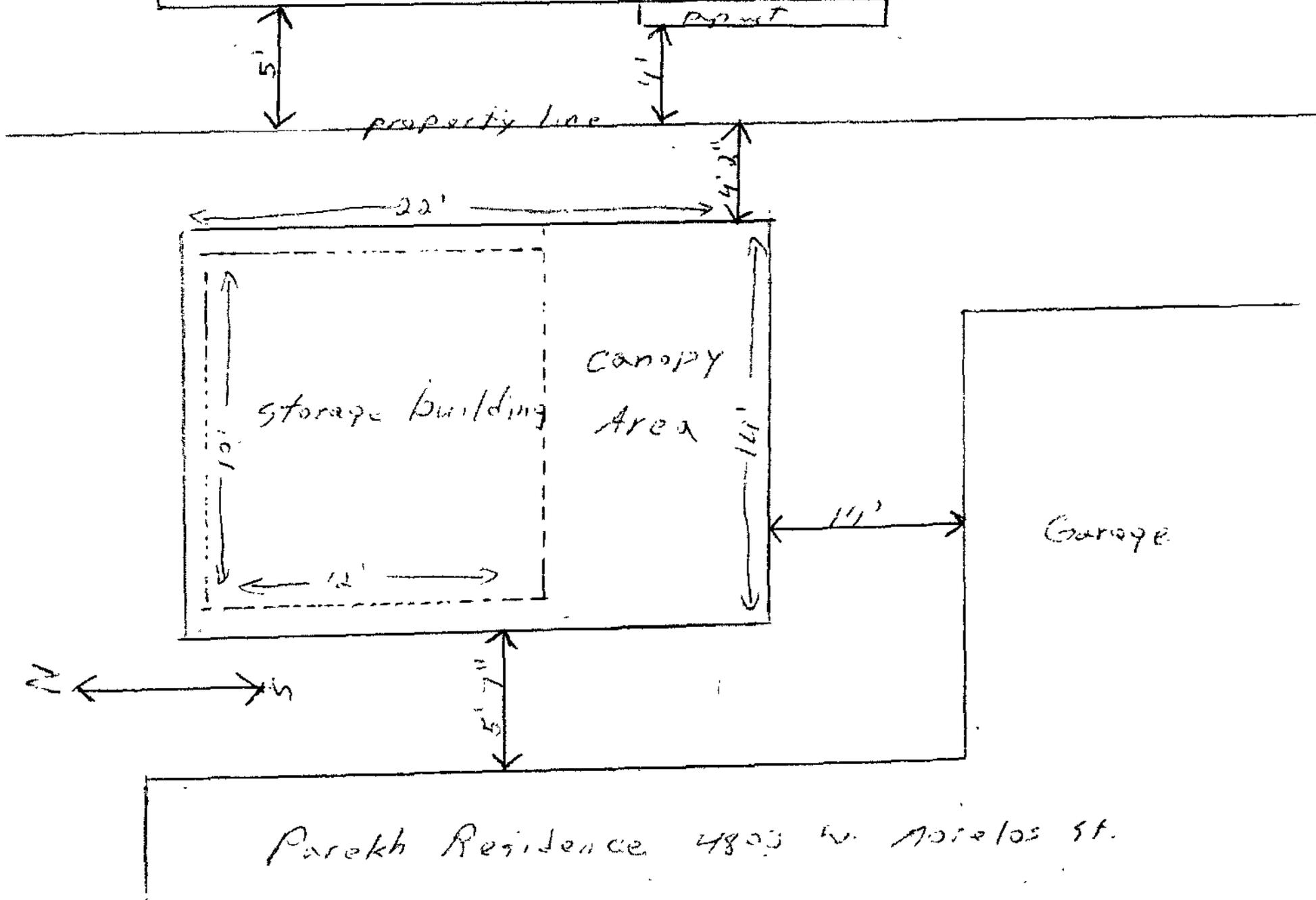
**VAR09-0008**

**Parekh Residence  
4803 W. Morelos St.**

# 4803 W. Morelos St.



Merylibus Residence



Parekh Residence 4803 W. Morelos St.



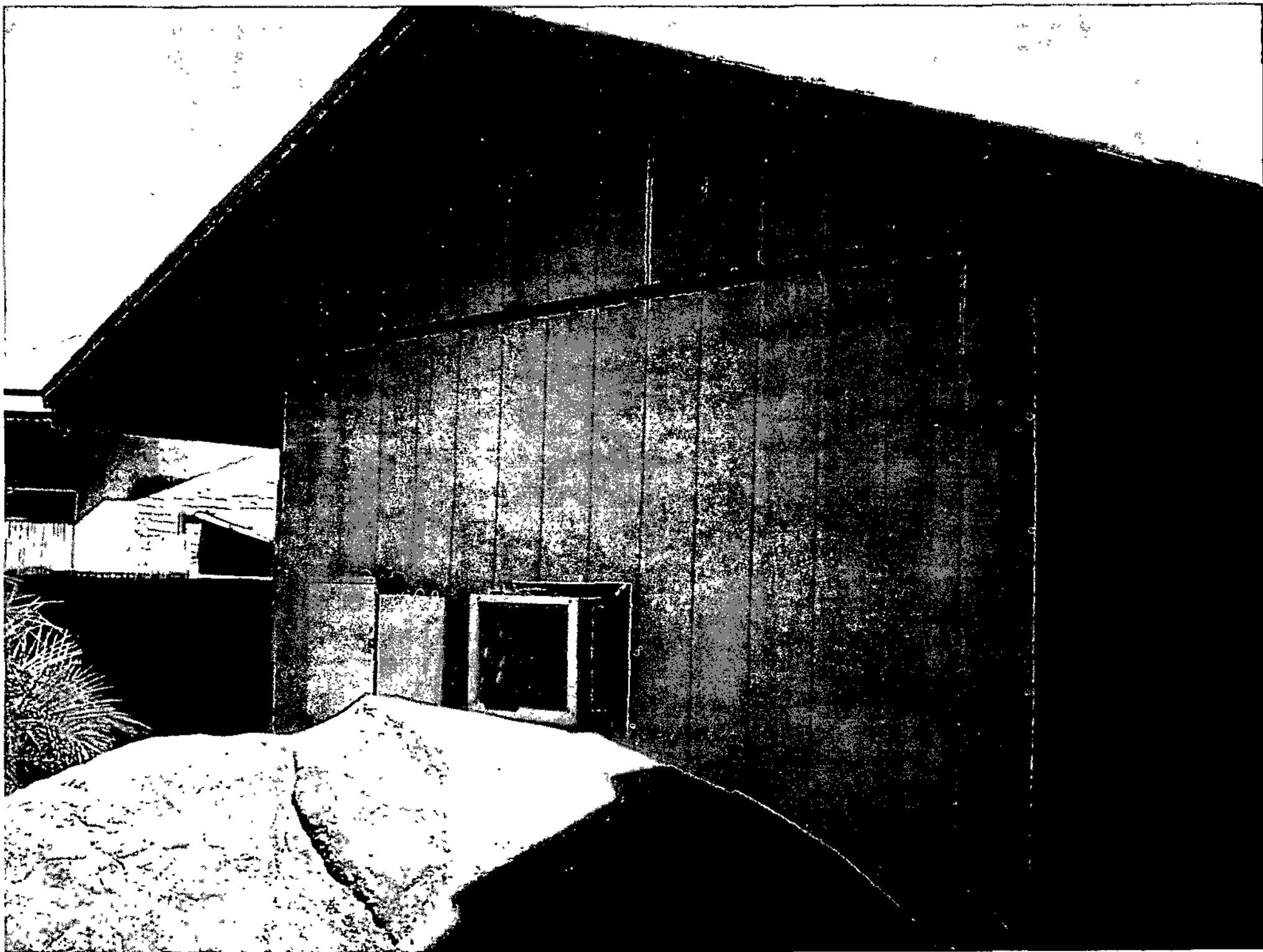
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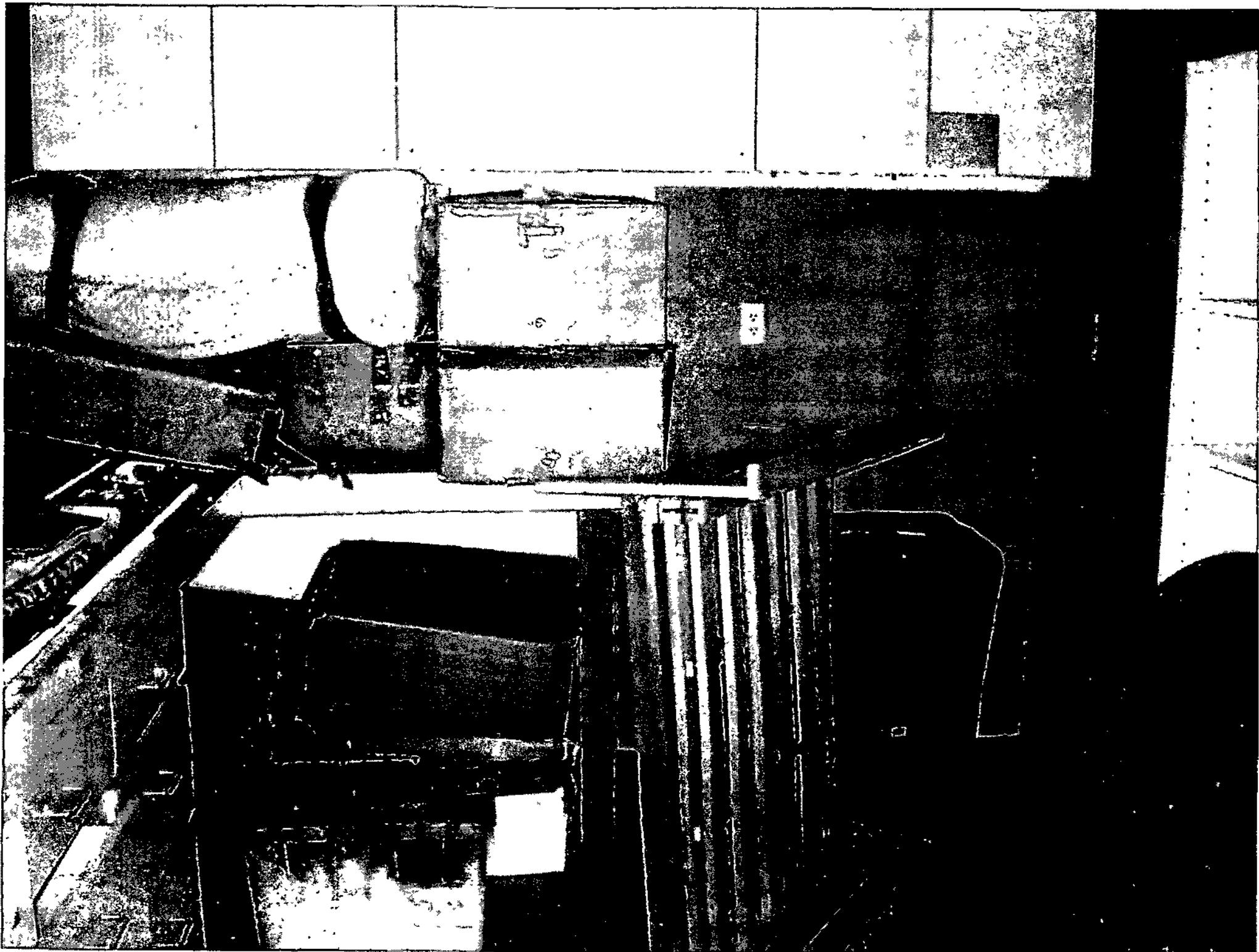


















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RECEIVED  
MAY 12 2009  
BY BA

# Variance Request Application

If the property owner is not filing the application, please fill out the attached letter authorizing an applicant or project representative to file the application.

Project or Owner Name <i>Aashish Parekh, Shruti Parekh</i>		
Property Location/Address <i>4803 W. Maxwell St.</i>		City, State, Zip Code <i>Chandler Az 85226</i>
Type of Variance (waiver) from the Zoning Code you are requesting: <i>see attached</i>		
Is this variance for an existing structure (e.g. fence, pool, etc.)? Yes: <input checked="" type="checkbox"/> No: <input 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 <i>Aashish Parekh, Shruti Parekh</i>		
Mailing Address <i>4803 W. Maxwell St.</i>		Phone Number <i>480-221-8076</i>
City, State, Zip Code <i>Chandler Az</i>		Fax Number
Applicant/Representative Name <i>Jason Snell</i>		
Mailing Address <i>8521 E. McDowell Rd #133</i>		Phone Number <i>480-818-2172</i>
City, State, Zip Code <i>Scottsdale Az 85257</i>		Fax Number
Property Owner or Representative Signature <i>Jason Snell</i>		Date <i>5/7/09</i>
<b>For City Use</b>		
Date Filed <i>05-12-09</i>	Development No. <i>VAR09-0008</i>	Case Planner

Mailing Address,  
P.O. Box 4008, MS 105  
Chandler, Arizona 85244-4008

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

Telephone: (480) 782-3000  
Fax: (480) 782-3075  
[www.chandleraz.gov](http://www.chandleraz.gov)

Form No UDM-63  
Rev 3-5-09



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# Variance Request Letter of Authorization

Please accept an application for a Variance for property located at:

4803 W. Marseler St. Chandler Az 85226

Assessor's parcel number(s):

Said property is owned by:

Aashish Parekh, Shreya Parekh

Who hereby authorizes me to file this application on his/her behalf.

I certify that the above information is correct, and that I am authorized to file an application on said property on behalf of the owner.

Juan Amell      5/11/09  
Applicant Signature      Date

Aashish Parekh      5/11/09  
Property Owner Signature      Date

S. A. Parekh      5/11/09  
Property Owner Signature      Date

\_\_\_\_\_  
Property Owner Signature      Date



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## 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.

*See Attached*

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

*See Attached*

## 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.

*See Attached*

**Type of Variance (waiver) from the Zoning Code you are requesting:**

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We are requesting the following variances:

1. Allow a 4' 2" setback from an adjacent property line.
2. Allow a 5' 8" property separation from the residence
3. Allow the existing electrical to remain
4. Allow the height to be 11' 7"

In the 1<sup>st</sup> alternative we request the following:

1. Allow the existing electrical to remain
2. Allow the height to be 11' 7"

We will remove the canopied area to reduce the building size to 120 S.F. or less, cut back the eaves as to not exceed 1' from building thereby categorizing this structure as a storage shed. Therefore setbacks and property separations would not apply.

In the 2<sup>nd</sup> alternative we request the following:

1. Allow the height to be 11' 7"

We will remove the canopied area to reduce the building size to 120 S.F. or less, cut back the eaves as to not exceed 1' from building and remove all electrical from the building thereby categorizing this structure as a storage shed. Therefore setbacks and property separations would not apply

**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 shape of this lot is irregular and on the corner of a cul de sac and does not allow for the structure to be at the rear of the house because the pool and accessories take up almost all of that area. The east side of the house has no street access and would not be practical.

The structure was built by the original owner of the property. The property was then sold. The subsequent owner was notified by the city of the violations. The subsequent owner notified the city that the house was going into foreclosure and that the city should contact the bank. It becomes unclear at this point as to whether or not the city followed up with the bank to have the violations addressed. It is only after the house is sold to Mr. & Mrs. Parekh and more than 12 months pass that the city notifies the new owners of the violations. We feel the city should have pressed the issue with the owners at the time the violations became apparent. In not being diligent in their duty, the city has passed the

burden of addressing these violations on to the present owner. Under the circumstance we respectfully request that you allow the variances outlined above.

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

We feel we should be allowed to have the property remain as it is. We purchased the home and lot because of all the amenities including the structure in question. We were never informed of any possible violations or adjustments needed.

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

It is attractively built and barely visible from the street. Silvia Anderson, the property owner immediately adjacent to the building, has informed the city that she has no objection to it being there and. This is simply an oversized storage shed.

## **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.