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JAN 13 2010



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*Where Values Make The Difference*

**MEMORANDUM**                      **Planning and Development – BA Memo No. 09-018**

**DATE:**            JANUARY 4, 2010

**TO:**                BOARD OF ADJUSTMENT

**THRU:**            PATRICK MCDERMOTT, ASSISTANT CITY MANAGER  
                          JEFF KURTZ, ASSISTANT PLANNING AND DEVELOPMENT DIRECTOR  
                          KEVIN MAYO, ACTING PLANNING MANAGER *KM*

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

**SUBJECT:**        VAR09-1003 BANK OF AMERICA *J*

**Request:**            Variance from the Zoning Ordinance to allow an 8'-high fence to be located in the front yard of the Bank of America facility and within the minimum setback area along Ellis Street

**Applicant:**        Bank of America, John Pierstorff

**Location:**        2500 W. Frye Road, the northwest corner of Frye Road and Ellis Street

**Existing Use:**     Data center facility

**Zoning:**            Planned Industrial District (I-1)

**RECOMMENDATION**

Upon finding special circumstances applying to the land that are not self-imposed, that a variance is necessary to enjoy reasonable property rights, and that granting the variance will not be detrimental to the community, Staff recommends approval of the requested variance.

**BACKGROUND**

The application requests a variance from the zoning requirements to allow an 8'-high wrought iron fence to be located in the front yard of a data center facility located at the northwest corner of Frye Road and Ellis Street in the Planned Industrial (I-1) District. The front yard includes all portions of the property closer to Frye Road than the face of the principal building. The Zoning Code restricts front yard fences to 3' in height.

The application also requests a variance from the zoning requirements to allow an 8'-high fence along Ellis Street in the minimum building setback area beyond the "front yard". The Zoning Code restricts fences in this area to 2'-6" in height.

Historically, the building was used for aerospace manufacturing. It was converted to a data center use and absorbed by Countrywide, its northern neighbor. Countrywide was later purchased by the applicant, Bank of America.

The subject business has been in the process of absorbing former Countrywide facilities, including the data center at this location. The building is also in the process of adding data center capacity interior to the building at this location. The addition of government contracts and the general desire to upgrade safety have prompted this request.

An 8'-high fence at the requested location within the minimum side setback area, only 11' from the side property line along Ellis Street, allows the site to come much closer to meeting federal anti-terrorism guidelines than a fence behind the 50' building setback line.

**CODE REQUIREMENTS**

Allowable fence heights in the street-side, side yard setback areas, such as along Ellis, are established in the Zoning Code:

**35-1902. Site development plan design standards.**

(4) Site organization:

(a) Setbacks:

2. For structures or any physical improvement in proximity to street intersections:

- a. Intersections as described below are of value to the entire community. Land situated at the corner of such street intersections shall be landscaped, and remain open and free of buildings, parking areas, driveways, and walls in excess of two (2) feet six (6) inches in height. Ingress and egress drives perpendicular to the street are expected. The dimensions of these open areas shall satisfy at a minimum, the following standards:

<i>Type of Intersections</i>	<i>Setback From Right-of-Way</i>	<i>Setback Shall Apply for a Distance From the Intersection for</i>
Arterial street with arterial street	50 feet	250 feet along both streets
Arterial street with any other street	50 feet	100 feet along arterial street
	30 feet	100 feet along other street
Collector street with collector street	30 feet	60 feet along both streets

As Frye Road is an arterial street and Ellis Street is a collector, the above table indicates a 30' setback along Ellis Street on this site. By long-established judgment of the Zoning Administrator, the third column addressing setback distance applicability only refers to landscaped setbacks. Therefore, for buildings and walls in excess of 2'-6", the 30' setback is in force along the entire property length.

Maximum front yard fence heights in the Planned Industrial (I-1) District are established in the Zoning Code:

**35-2204. General.**

(8)(b) No fence or wall shall be constructed within the front yard of any nonresidential lot, parcel or subdivision exceeding a height of three (3) feet; and such fence or wall located in the side or rear yard(s) shall not exceed a height of eight (8) feet, except that:

1. A wrought-iron fence or a combination three-foot masonry wall topped by wrought iron or other similar fencing, either of which not to exceed a height of six (6) feet to achieve security for those uses featuring a display of merchandise or equipment, may be permitted along the street property line or within the front yard setback. Chain-link fencing for this purpose shall be prohibited.

Since the fence is not used to achieve security for a use featuring merchandise or equipment display, the maximum height is 3' in the front yard.

**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 site contains an existing data center facility that was constructed approximately 66' from the property line along Ellis Street with a parking lot immediately adjacent to the building in the "front yard" toward Frye Road. Along Ellis Street, it is impossible to locate the 8' fences outside the 30' front yard setback and also meet the federal guidelines that require 100' separation from the building without major reconstruction. Obviously, 100' separation is not possible on this site, but the level of safety increases with whatever distances are obtainable.*

*With regard to the front yard fencing, a 3'-high fence would not provide the security against vehicles and pedestrians afforded by the specially reinforced 8'-high fence proposed. Staff is of the opinion that this criterion has been satisfied.*

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

*The property requires a certain level of safety measures in order to properly function as a data center. If the variance is not granted, the facility would have to operate at a higher level of risk that would endanger its viability. Staff is of the opinion that this criterion has 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 have minimal negative effect due to its wrought-iron style, rather than a solid block, and its location in a nonresidential area where such fences might normally be expected. Staff is of the opinion that this criterion has been satisfied.*

#### **PUBLIC/NEIGHBORHOOD NOTIFICATION**

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

The property owner at the southwest corner of the Frye/Ellis intersection has expressed opposition to the request, primarily because he feels that an 8'-high fence would be unsightly and contribute to the perception that the area is unsafe.

#### **SUMMARY**

Staff supports this request. The subject site has the special circumstance of having a set building location that grants limited flexibility to provide its intended function while simultaneously meeting federal safety fence separation guidelines. Granting of a variance would not have a significant negative impact on surrounding properties, but would instead benefit the area by allowing for increased safety with minimal visual impact.

#### **RECOMMENDED ACTION**

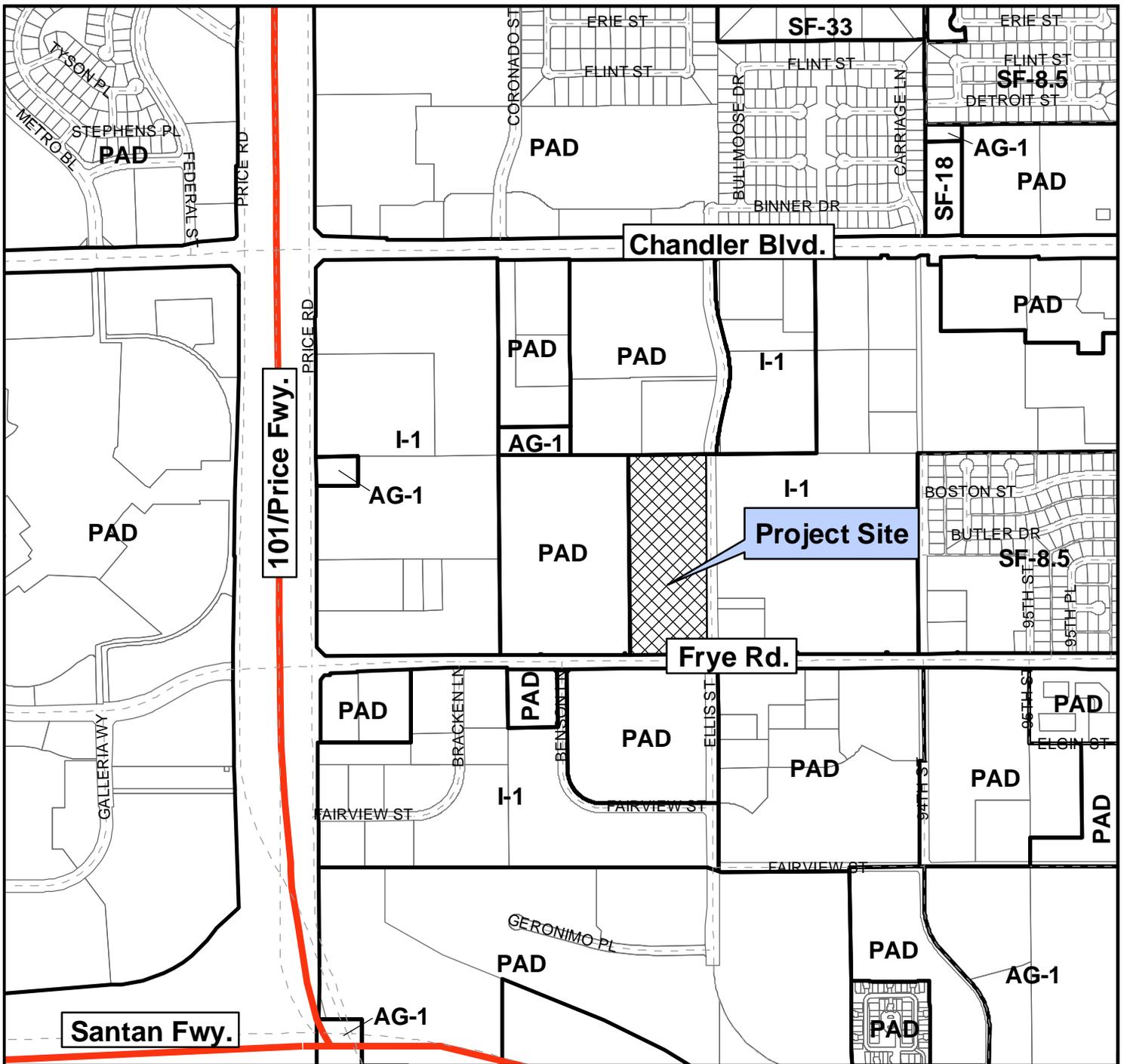
Staff recommends approval of this request.

#### **PROPOSED MOTION**

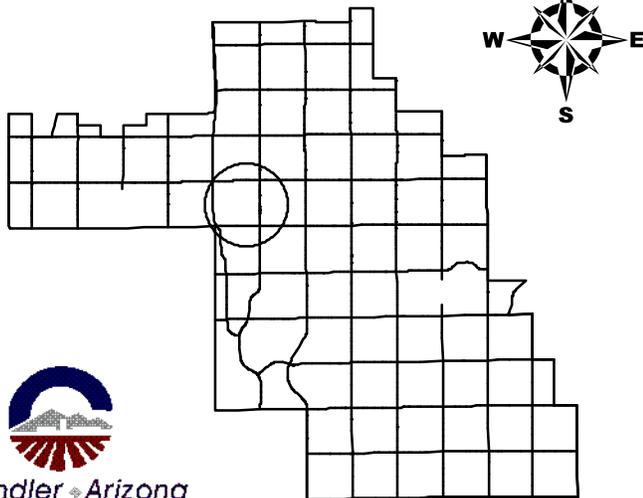
Move to approve variance request VAR09-1003 BANK OF AMERICA as recommended by Staff.

#### **Attachments**

1. Vicinity Map
2. Site Plan
3. Section Plan
4. Site Photos
5. Fence Sample Photo
6. Application and Narrative
7. Powers and Duties

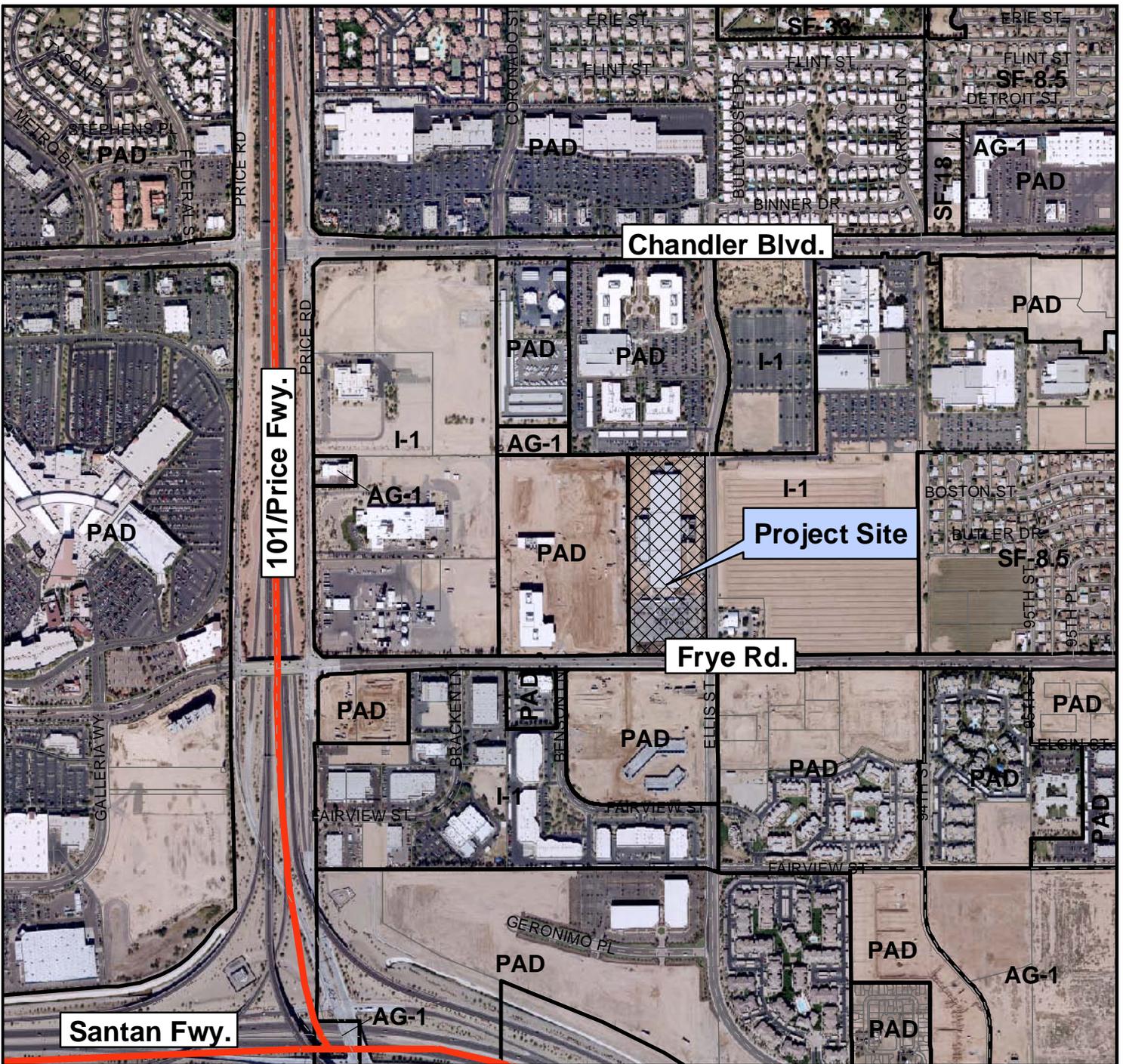


## Vicinity Map

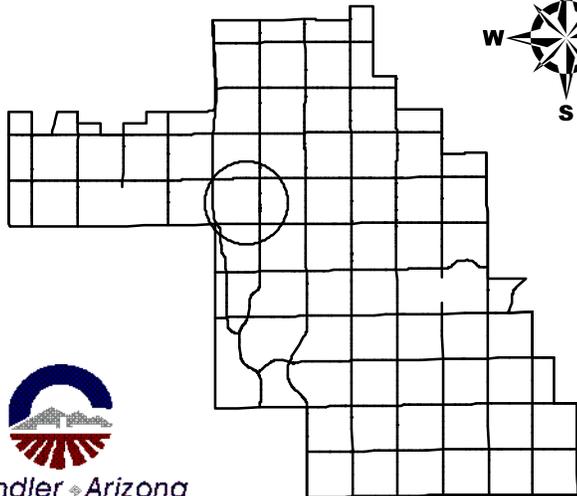
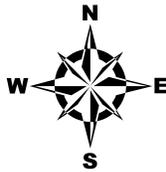


VAR09-1003

**Bank of America  
2500 W. Frye Rd.**



## Vicinity Map



VAR09-1003

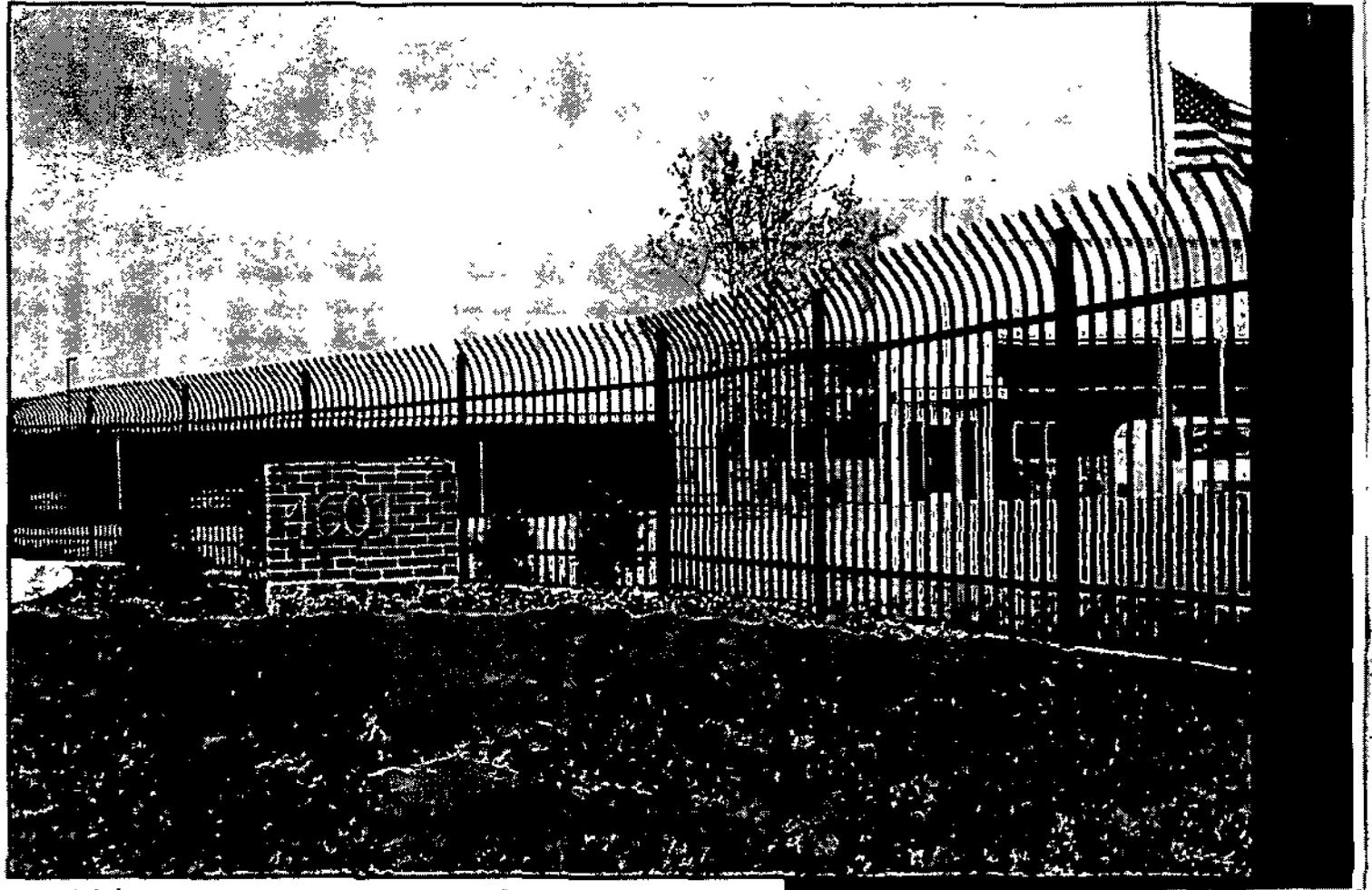
**Bank of America  
2500 W. Frye Rd.**













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# 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*

<b>Project or Owner Name</b> BANK OF AMERICA 2500 WEST FRYE ROAD PHASE TWO		
<b>Property Location/Address</b> 2500 WEST FRYE ROAD		<b>City, State, Zip Code</b> CHANDLER, AZ 85224
<b>Type of Variance (waiver) from the Zoning Code you are requesting:</b> Request to allow an 8'-high fence to be located in the front yard of the Bank of America facility and within the minimum setback area along Ellis Street [Zoning Code Sections 35-2204 (8)(b) and 35-1902 (4)(a)]		
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.		
<b>Property Owner Name</b> Bank of America		
<b>Mailing Address</b> 2500 West Frye Road		<b>Phone Number</b> 480-224-5483
<b>City, State, Zip Code</b> Chandler, AZ 85224		<b>Fax Number</b> 972-728-4410
<b>Applicant/Representative Name</b> John Pierstorff		
<b>Mailing Address</b> 2595 West Chandler Blvd		<b>Phone Number</b> 480-224-5483
<b>City, State, Zip Code</b> Chandler, AZ 85224		<b>Fax Number</b> 972-728-4410
<b>Property Owner or Representative Signature</b> 		<b>Date</b> 8-14-2009
<b>For City Use</b>		
<b>Date Filed</b>	<b>Development No.</b>	<b>Case Planner</b>

Mailing Address:  
P.O. Box 4008, MS 105  
Chandler, Arizona 85241-4008

**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

Form No.: LDM 63  
Rev. 7-1-09



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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.

The Bank of America data center located at 2500 W Frye Road, Chandler, AZ is scheduled for a build out of a second data hall project for capacity expansion this year. As part of this capacity expansion, the exterior security of this site will be brought up to national Bank of America standards for Mission Critical Core Data Centers. Bank of America exterior standards and guidelines, (including security fence setbacks) are per the defined guidelines set by the U.S. Department of Justice for Mission Critical Facilities considered to be vital to our National Security.

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

The purpose of the Physical Security upgrade is to protect the critical data center site, its contents and personnel from injury or loss. Business interruption of the critical data center functions would have significant impact on Bank of America's operations; resulting in loss of customer trust, and potential legal and regulatory action against the Bank. The core data center security standard includes installation of K4 rated perimeter fencing 100 feet from the building, card reader operated gates and/or arms, wedge barriers at vehicle entrances and card access controlled turnstiles at personnel entrances. The current plan for this site is to enclose the existing parking lot within the fence and allow only data center personnel access to the area. The purpose for enclosing the entire lot is to maintain the minimum standoff distance from the building and to eliminate space outside the fence for a vehicle to accelerate to a speed sufficient to penetrate the fence.

## Justification for Variance Request (Cont'd)

2. Response continued.

Understanding the significance of this type facility and the vulnerabilities it is subject to is crucial. Unfortunately, the threats we face today are real and all reasonable efforts to protect against them should be afforded. This type fence is designed to protect against a 15,000 lb vehicle traveling at 30 mph from penetrating any further than the fence line. This type installation also assists with minimizing the amount of public foot and vehicular traffic into our data center and its surrounding area. As illustrated on the chart below, provided by the US Department of Justice, one can see that the minimum evacuation distance for a compact sedan packed with 500 lbs of explosives is 1,500 feet. We are recommending only the 100 foot minimum for a lethal air blast where the risk of a vehicle explosion produces an air born trajectory that could cause the loss of life.

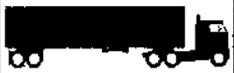
Refer to the Safe Distance Reference Chart on next page.

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

Although this project is situated in an I-1 Planned Industrial District, Bank of America has gone great lengths to find a perimeter security fence which does not compromise on aesthetic considerations and meets Bank of America's national standards for Mission Critical Core Data Centers and the recommended setback distances defined by the US Department of Justice. The proposed plan is to provide a contemporary ornamental fence which fulfills our security requirements by incorporating the K-4 anti-ram cables in one seamless aesthetic solution. This solution will not have a negative aesthetic impact on its adjacent neighbor, whose land is also zoned I-1 and is currently a vacant site. The portion of fence seeking a variance will be set back 11'-0" from the edge of the eastern property line (see exhibit A-003). However, this will still leave a significant amount of space (16'-0" +/-) between the fence and public pedestrian / vehicular traffic, which will be utilized for landscaping and screening. The new fence will not impede on the site lines of vehicular traffic and does not come close to any street intersections.

As you can see from the attached chart provided by the US Department of Justice, every foot counts when it comes to facility blast protection. Moving the fence into the setback gains an additional 35'-0" of blast protection for Bank of America's mission critical facility, which includes the SRP easement shown in plan and section. The closer proximity of the fence to the street also reduces the speed that a potential threat could accumulate if trying to penetrate the perimeter fence.

### Safe Distance Reference Chart

Source: U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	VEHICLE DESCRIPTION	MAXIMUM EXPLOSIVES CAPACITY	LETHAL AIR BLAST RANGE	MINIMUM EVACUATION DISTANCE <sup>a</sup>	FALLING GLASS HAZARD <sup>b</sup>
	COMPACT SEDAN	500 Pounds 227 Kilos <i>(In Trunk)</i>	100 Feet 30 Meters	1,500 Feet 457 Meters	1,250 Feet 381 Meters
	FULL SIZE SEDAN	1,000 Pounds 455 Kilos <i>(In Trunk)</i>	125 Feet 38 Meters	1,750 Feet 534 Meters	1,750 Feet 534 Meters
	PASSENGER VAN OR CARGO VAN	4,000 Pounds 1,818 Kilos	200 Feet 61 Meters	2,750 Feet 838 Meters	2,750 Feet 838 Meters
	SMALL BOX VAN <i>(14 FT BOX)</i>	10,000 Pounds 4,545 Kilos	300 Feet 91 Meters	3,750 Feet 1,143 Meters	3,750 Feet 1,143 Meters
	BOX VAN OR WATER/FUEL TRUCK	30,000 Pounds 13,636 Kilos	450 Feet 137 Meters	6,500 Feet 1,982 Meters	6,500 Feet 1,982 Meters
	SEMI-TRAILER	60,000 Pounds 27,273 Kilos	600 Feet 183 Meters	7,000 Feet 2,134 Meters	7,000 Feet 2,134 Meters

<sup>a</sup> Minimum Evacuation Distance is the range at which a life-threatening injury from blast or fragment hazards is unlikely. However, non-life threatening injuries or temporary hearing loss may occur. Hazard ranges are based on open, level terrain. Minimum evacuation distances may be less when explosions are confined within a structure.

<sup>b</sup> Falling Glass Hazard range is dependent on the line-of-sight from explosion source to window. Hazard is from falling shards of broken glass. Explosions confined within a structure may cause structural collapse of building debris hazards. Additional hazards can include vehicle debris.

## **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