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MEMORANDUM

Transportation & Development – BA Memo No. 13-001

DATE: FEBRAURY 5, 2013

TO: BOARD OF ADJUSTMENT

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

FROM: JESSICA SARKISSIAN, AICP, CITY PLANNER

SUBJECT: VAR12-0010 PIÑA RESIDENCE

Request: Variance from the Zoning Ordinance to allow an accessory building to be considered an open-air ramada to encroach into the minimum rear yard setback, to be located closer to the residence then permitted and to allow a structure to be considered an open-air ramada despite its size being larger than 150 square feet and taller than 10 feet

Applicant: Frank A. Piña

Location: 3302 W. Monterey Street, south Ray Road and west of the Price 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 fully satisfied, recommends denial of the requested variance.

BACKGROUND

The property, which contains a single-family home, is within the Sun Rise subdivision zoned PAD and is located on the south side of Ray Road west of Price Road. The 156 lot subdivision contains lots ranging from approximately 7,500 to 18,500 square feet in size, with most lots between 7,500 and 7,600 square feet. The subject lot is approximately 7,800 square feet and has a 2,230 livable square foot house built in 1993.

This application request of an accessory building to be considered an open-air ramada entails four separate variance requests. The first is to allow a structure larger than 150 square feet to be considered an "open-air ramada". The second is to allow the larger than permitted ramada to encroach into the entire rear yard up to the rear property line. The third is to allow the ramada a maximum height of 10'6"; a maximum 10' is permitted. The fourth is to allow the ramada to be located within 7'6" of the main residence. As an "open-air ramada", the structure is required to be separated from the house by 10' (1/2 the minimum rear yard setback for the principal structure, which is 20').

The ramada is adjacent to an existing swimming pool in the rear yard. A barbeque was previously built under the ramada and does not violate the Zoning Code.

On the site plan included with the application materials, the ramada's dimensions are taken from the outside of the support posts as well as the eaves. According to the Zoning Code, an "open-air ramada's" size and setbacks are to be calculated from the outside edge of cover.

Responding to a complaint, a City of Chandler building inspector issued a violation notice for the ramada being built without a City permit or zoning approval.

CODE REQUIREMENTS

Minimum building setbacks in the Sun Rise subdivision are established through the guidelines in the PAD zoning. The development's building setbacks are a minimum front 18' to forward facing garages, 20' rear yard setback, and 5' minimum side yard setbacks.

Minimum setbacks for an open-air ramada are established by the Zoning Code section related to height and area regulations for accessory buildings.

35-2202. Accessory buildings.

2) Accessory buildings shall meet the minimum side and rear yard setbacks for the district in which it is located, except that open-air ramadas as defined by the Code [in Section 200] may achieve a minimum five-foot side yard and five-foot rear yard setback, as measured from the edge of the roof or cover. In the event that an alley, or common open space public or private other than a street, adjoins a rear yard along one (1) or more property lines, the required five-foot setback from the property line to such ramada shall be eliminated. Any accessory buildings within a Planned Area Development (PAD) zoning designation shall be subject to the applicable provisions of the adopted preliminary development plan.

Though the property is in the PAD zoning designation, the adopted Preliminary Development Plan defers to the Zoning Code on the subject of open-air ramadas. Therefore the minimum required setbacks from side and rear property lines are 5'.

The minimum separation from a residential dwelling for an "open-air ramada" is established by the Zoning Code definition.

35-200. Definitions.

Open-air ramada:

A detached accessory building or structure open on the sides and supporting a roof or lattice-type cover, primarily for the purpose of providing shade in conjunction with a recreational activity, such as a swimming pool, Jacuzzi, or sitting area, and not to exceed both ten (10) feet in height and 150 square feet in area, and separated from the residential dwelling by a distance equal to at least ½ of the rear yard setback.

The structure does not meet the required building setbacks for an “open-air ramada” or an “accessory building”.

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.**

This lot is not an atypical size and shape for this neighborhood. The lot is average for the neighborhood and offers rear yard space to locate a ramada that complies with the required setbacks. 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 1993. It is not a property right to build an open-air ramada or accessory building that does not abide by, building setbacks, separation and size regulations. The desired ramada can still be achieved by creating a smaller structure, adding shade trees and/or using an umbrella. 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 the structure’s roof overhangs the property wall and directs water runoff onto the adjacent lot to the north. The ramada is also visible from adjacent properties reducing their property enjoyment. A neighbor has contacted Staff about the ramada being an eyesore from her property. 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.

Staff has previously received calls in opposition from the neighbor directly behind the property and several neighbors whom have received neighborhood notices have expressed concern over potentially setting a precedent in this variance approval for future cases including an e-mail from neighbor Bob Stamm.

SUMMARY

Staff does not support this request. The subject site has no special circumstances to this property that do not apply equally to similar properties in the surrounding area. The requirement to abide by the minimum setbacks and separation from the house for open-air ramadas or setbacks for accessory buildings is not a hardship for this property. The property has been substantially developed with the property owner enjoying the 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

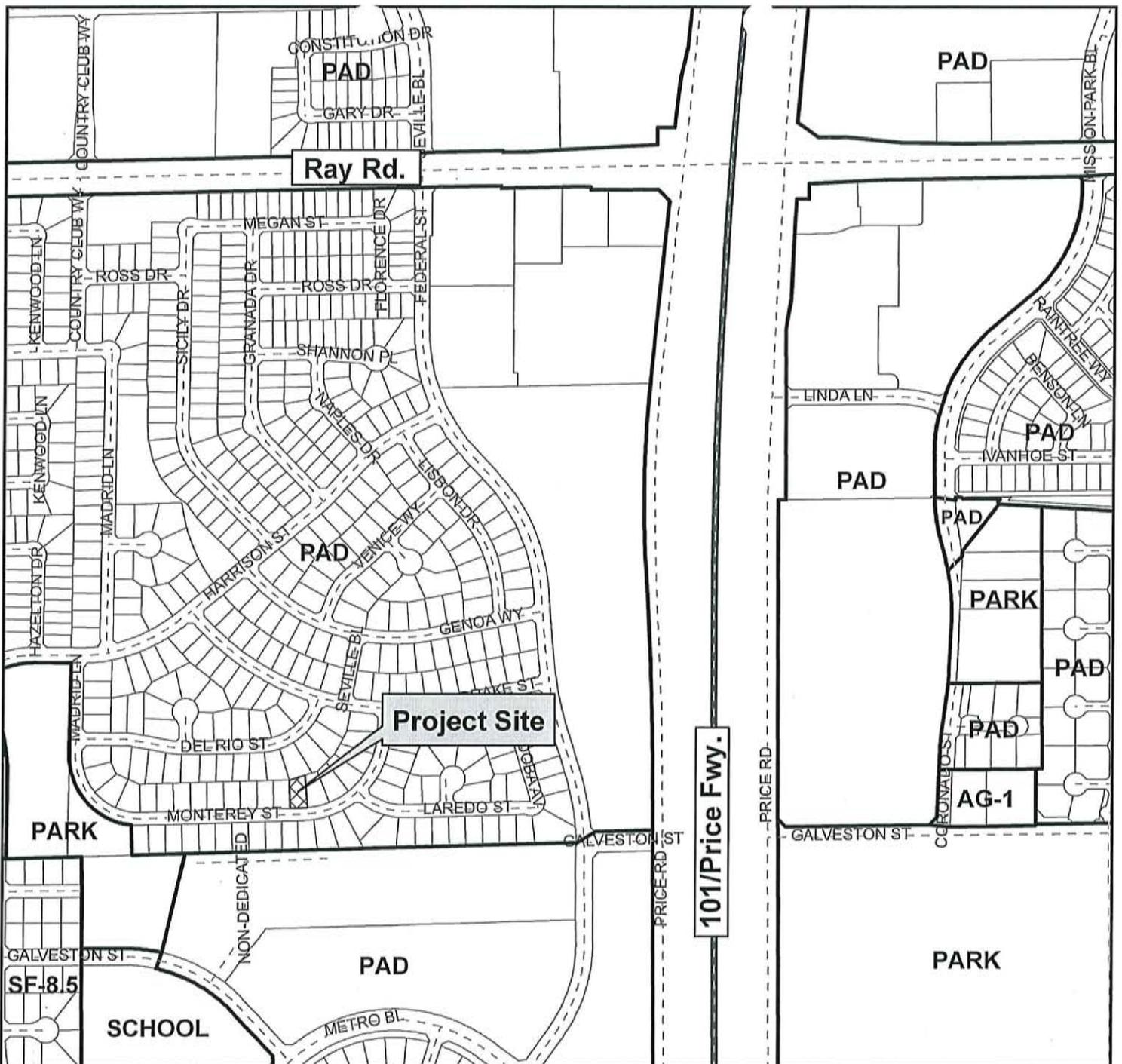
Staff recommends denial of this request.

PROPOSED MOTION

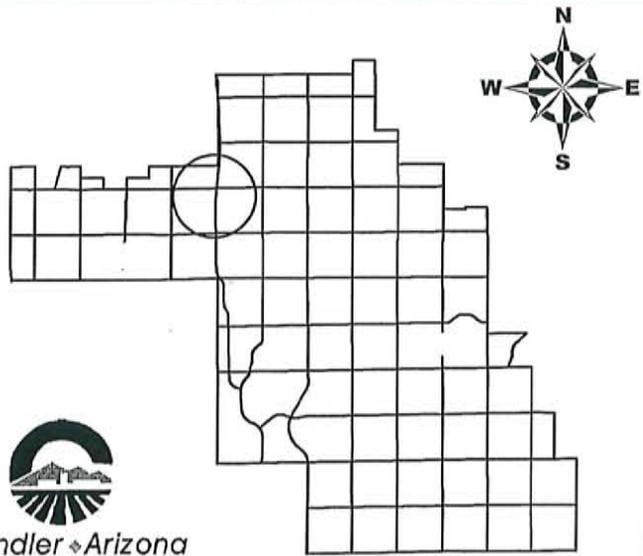
Move to deny the variance request VAR12-0010 PINA RESIDENCE, as recommended by Staff.

Attachments

1. Vicinity Maps
2. Aerial Photo
3. Application and Justification
4. Order to Comply Notice
5. Site Plans and Elevations
6. Photos
7. Powers and Duties



Vicinity Map



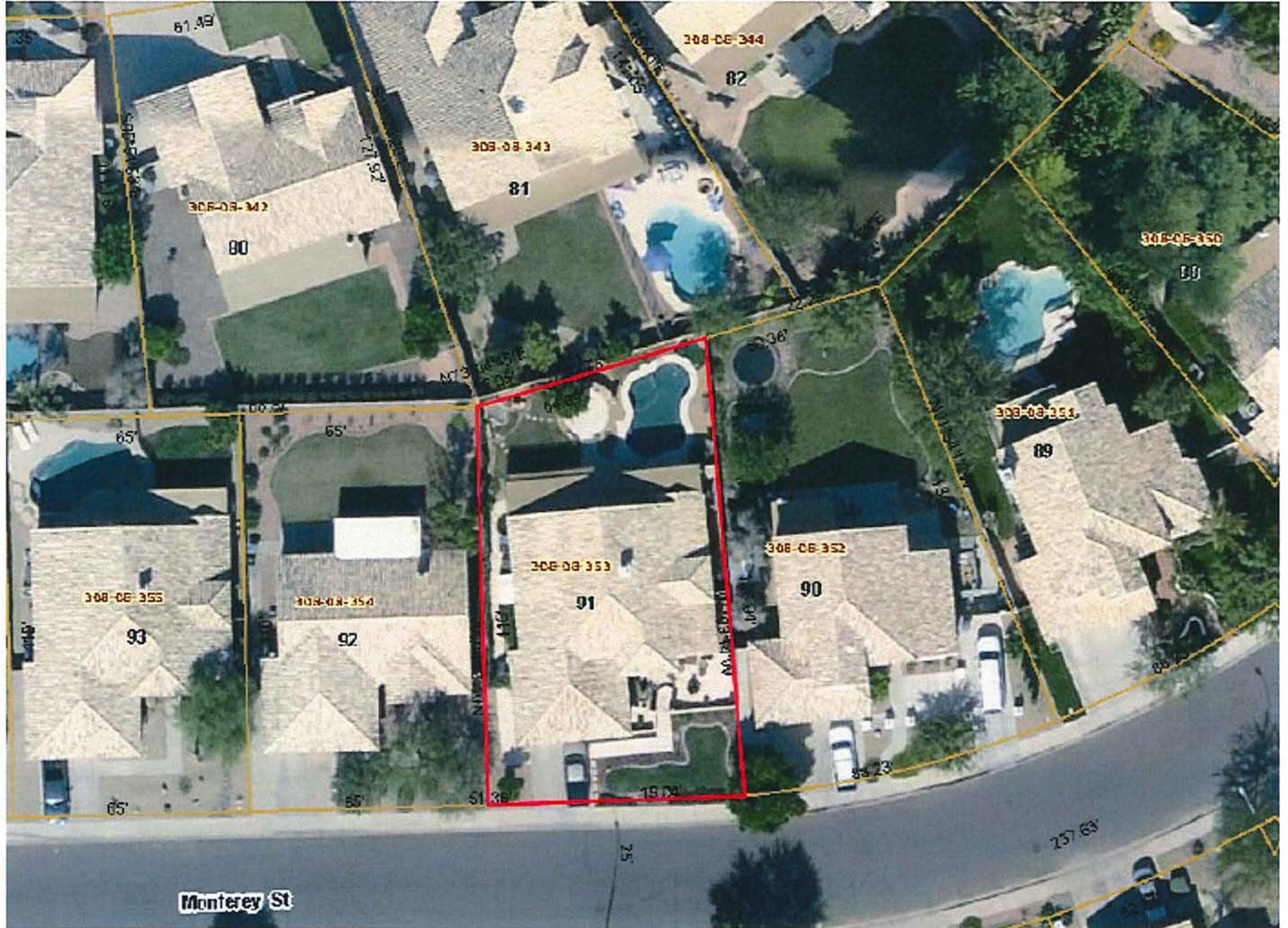
VAR12-0010

**Pina Residence
3302 W. Monterey St.**



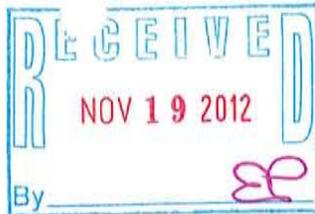
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VAR12-0010 AERIAL MAP





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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 PIÑA FRANK A.		
Property Location/Address 3302 W. MONTEREY ST.	City, State, Zip Code CHANDLER, AZ 85226	
Type of Variance (waiver) from the Zoning Code you are requesting: SEEKING VARIANCE APPROVAL FOR A GAZEBO BUILT TOO CLOSE TO REAR (NORTH) FENCE/WALL (PROPERTY LINE). (APN: 308-08-353)		
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 checked="" type="checkbox"/> No: <input type="checkbox"/> If yes, please attach a copy of the notice/letter. ORDER TO COMPLY		
Property Owner Name PIÑA FRANK A.		
Mailing Address SAME AS ABOVE	Phone Number 602-885-4238	
City, State, Zip Code	Fax Number frank.pina@aru.edu	
Applicant/Representative Name		
Mailing Address		Phone Number
City, State, Zip Code		Fax Number
Property Owner or Representative Signature 		Date 11/19/2012
For City Use		
Date Filed 11-19-12	Development No. VAR12-0010	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



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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.

GAZEBO WAS BUILT BY OWNER AND FRIENDS BASED ON DRAWINGS/PHOTOS OF OTHER ONES FOUND ONLINE. AS IT WAS BEING BUILT MATH CALCULATIONS AND THE DESIRE TO WASTE AS LITTLE MATERIAL AS POSSIBLE CAUSED THE GAZEBO TO BE BUILT A LITTLE LARGER THAN ORIGINALLY EXPECTED.

CARE WAS TAKEN TO ENSURE THE ENTIRE GAZEBO WAS BUILT WITHIN MY PROPERTY LINE UNAWARE OF CITY CODE REQUIREMENTS

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

CARE WAS TAKEN TO MAKE GAZEBO ATTRACTIVE TO ANY NEIGHBOR WHO COULD SEE IT WHILE MAINTAINING PRIVATE DESIRES OF NEIGHBOR WHO HAS PLANTED BUSHES & TREES ALONG THEIR FENCE/PROPERTY LINE. THINGS SUCH AS ROOFING MATERIAL, HEIGHT, AND QUALITY OF LUMBER WERE TAKEN INTO CONSIDERATION WHEN BUILT.

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.

CARE WAS TAKEN TO ENSURE ROOF RUN-OFF FROM
RAIN WAS CONTAINED WITHIN PROPERTY LINE. LATTICE
WAS PLACED AT REAR OF GAZBO SO NO EXCESS
LIGHTING OR NOISE WOULD DISTURB NEIGHBORS.
VALUE OF MATURUS USE SHOULD INCREASE PROPERTY
VALUE OF HOUSE.



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ORDER TO COMPLY

To the responsible party in violation of the City Code of Chandler, Arizona:

- Legal Notice
- Stop Work Order

Notice No.: 153- 001570
 Date: 6-19-12

This warning is issued to notify you that you are in violation of the code of the City of Chandler. You have a grace period of 7 days in which to correct this code violation. The City will conduct a follow up inspection. Failure to comply will result in a complaint being filed in the City court.

Address <u>3302 W. MONTEREY ST</u>						Phone No. <u>(602) 885-9238</u>	
Name <u>FRANK ANDREW PINA</u>							
ID <u>D05427330</u>	Date of Birth <u>10-20-1958</u>	Eyes <u>BROWN</u>	Hair <u>BROWN</u>	Height <u>5-8'</u>	Weight <u>200</u>	<input checked="" type="checkbox"/> M <input type="checkbox"/> F	

- Permit Zoning COFO HVAC General Construction
- Framing Electric Plumbing DW/Lath Concrete/Masonry

Items checked above represent areas not in compliance with City of Chandler codes or ordinances. Please remove the violation(s) and return to the original condition or obtain all required permits and call for inspections before any further work is done.

Code Violation: Gazebos built in BACKYARD without Permit -
Will need to apply for permit + bring structure up
to code. Structure sitting 17" from rear property
line - Octagon shape 19' diameter. ^{↑ measured from post.}
Side setbacks 21' + 30' ^{Edge overhangs property line. -js}
^{measured ~~1/4/12~~}
1/4/13

Inspector 	Phone <u>480-782-3155</u>	Date <u>6-19-12</u>
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CHANDLER CITY CODE

Sec. 1-8. General Penalty; continuing violations.

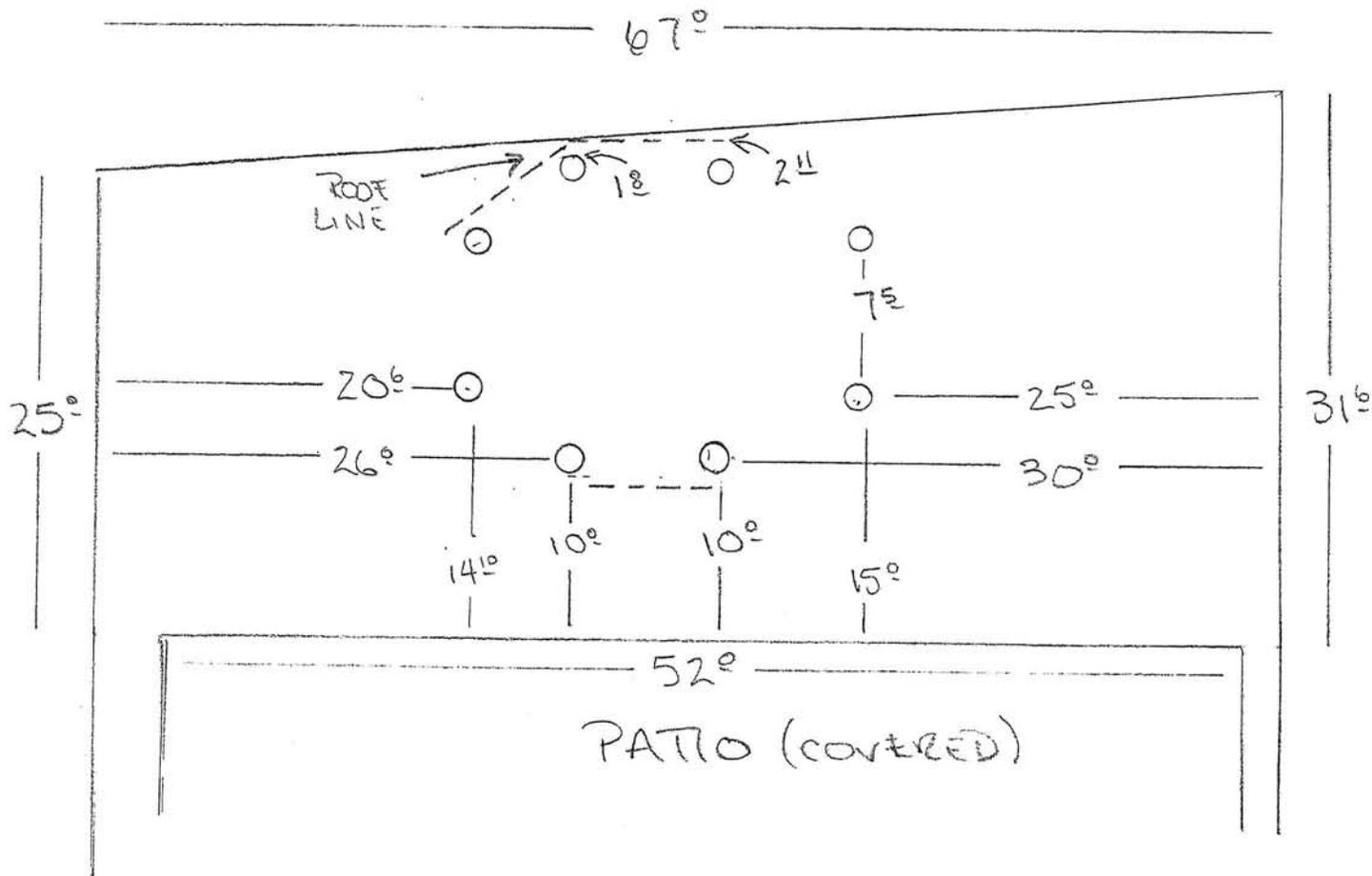
Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be guilty of a Class 1 misdemeanor, punishable by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment for a term not exceeding six (6) months, or by any combination thereof. Except as otherwise provided by law or ordinance, with respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense. (Ord. No. 1346, § 1, 5-21-84; Ord. No. 2532, § 1, 2-9-95)

For more information contact the Development Services Division, Code Enforcement Section, at 480-782-3114.

Mailing Address:
P.O. Box 4008, MS 406
Chandler, Arizona 85244-4008

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

Telephone: (480) 782-3114
Fax: (480) 782-3010
www.chandleraz.gov
Form No. PDD-04
Rev: 6-7-05

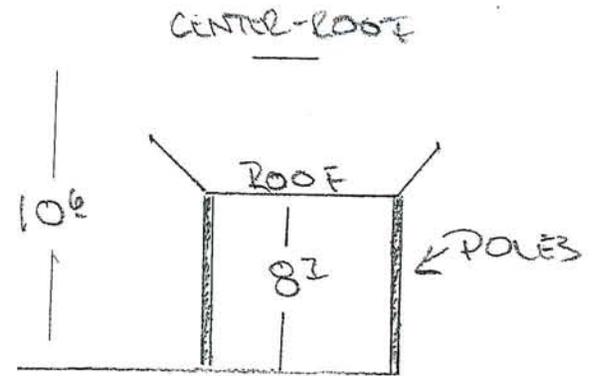


O = 8 INCH
POLES

ROOF OVERHANG =
16"

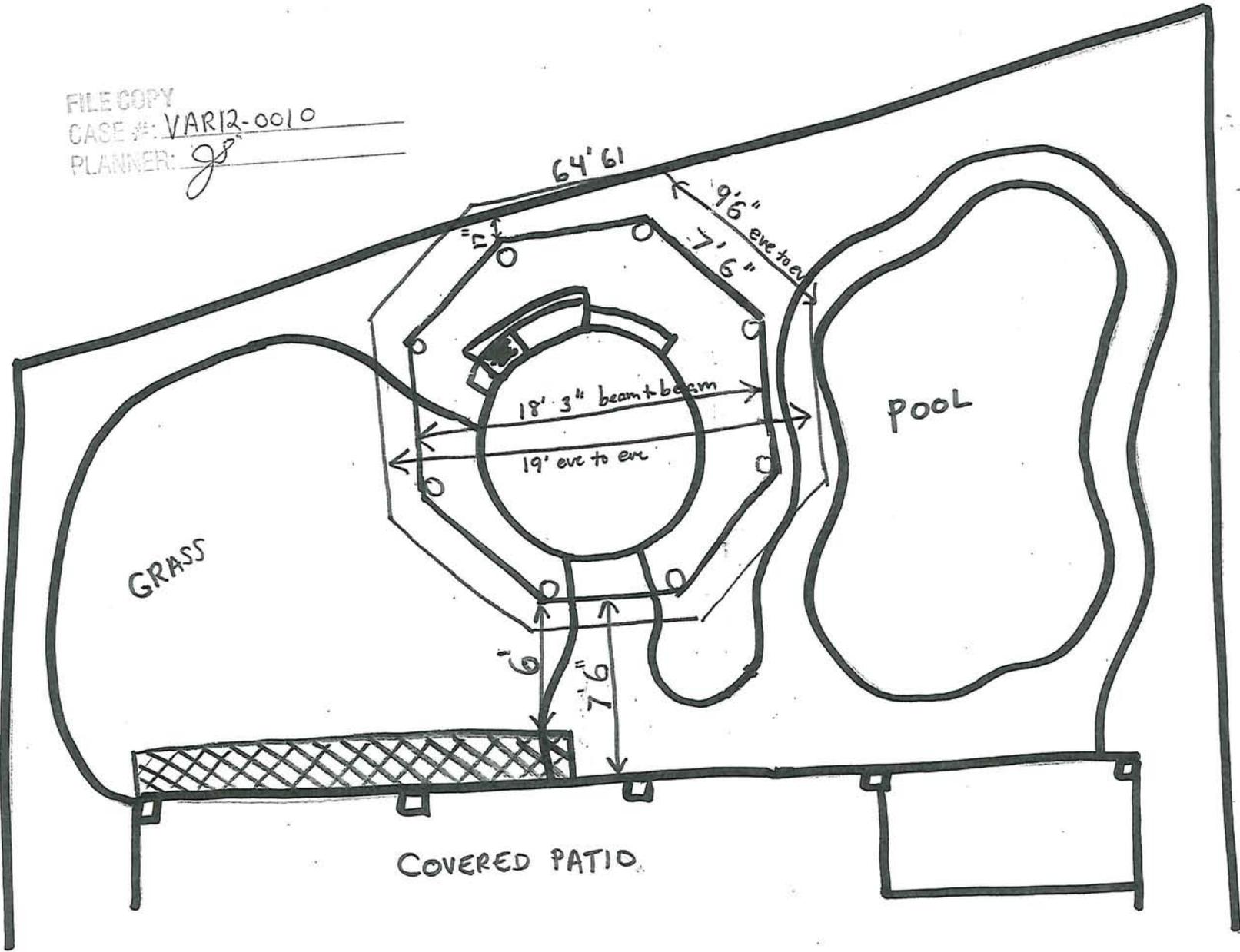
FILE COPY
CASE #: VAR12-0010
PLANNER: JF

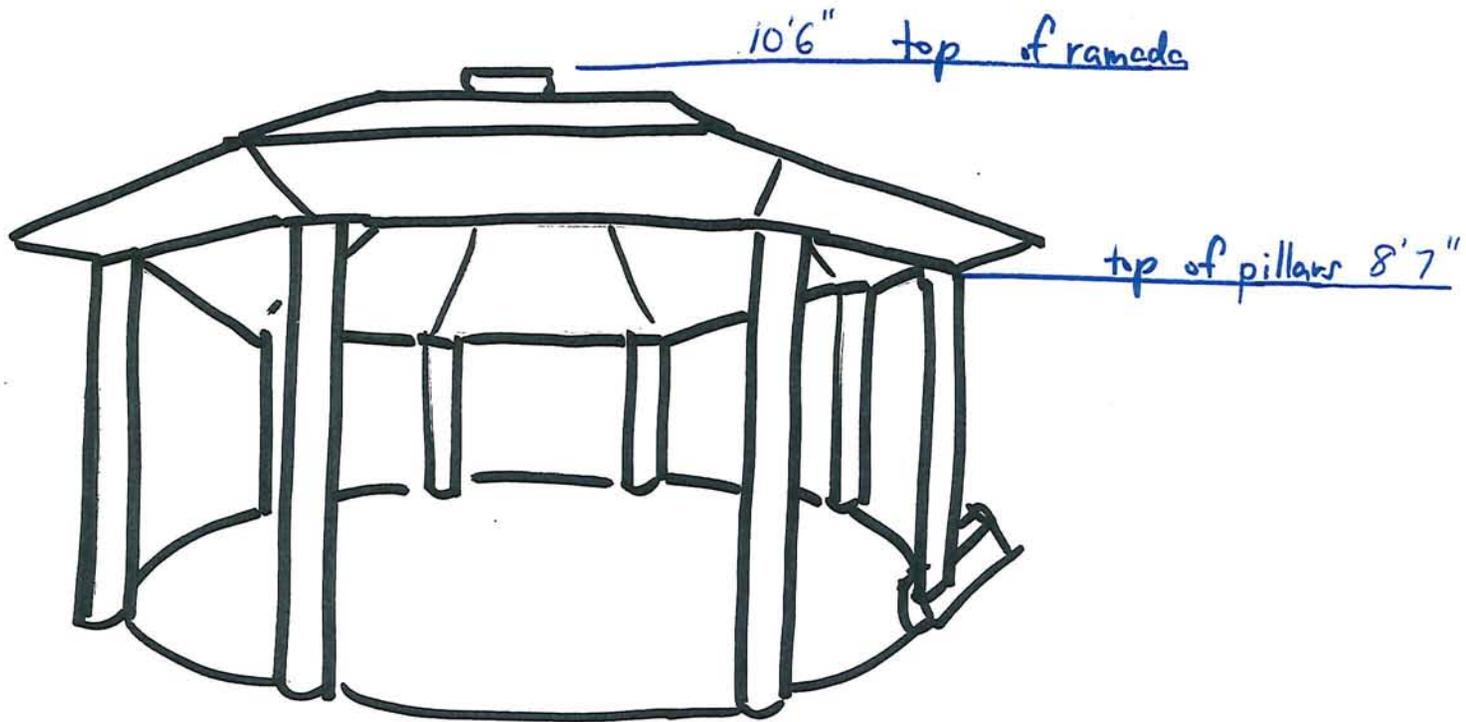
3302 W MONTEREY ST.
CHANDLER, AZ 85226



3302 W. MONTEREY ST.
CHANDLER, AZ 85226

FILE COPY
CASE #: VAR12-0010
PLANNER: *J*





VAR12-0010
3302 W. MONTEREY ST.
CHANDLER, AZ 85226

FILE COPY
CASE #: VAR12-0010
PLANNER: JS

Subject Site







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.