



MEMORANDUM Transportation & Development – BA Memo No. 13-008

DATE: JULY 10, 2013

TO: BOARD OF ADJUSTMENT

THRU: R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *876*
 JEFF KURTZ, PLANNING ADMINISTRATOR *KA*
 KEVIN MAYO, PLANNING MANAGER *KA*

FROM: SUSAN FIALA, CITY PLANNER *SXF*

SUBJECT: VAR13-0003 ROJAS RESIDENCE RECONSIDERATION

Request: Request reconsideration of a decision of the Board of Adjustment that occurred on May 8, 2013 which was a request to allow an existing carport attached to the house to encroach into the minimum side yard setback

Applicant: Anthony Rojas

Location: 226 East Redfield Road, north of the Western Canal and east of Arizona Avenue

Existing Use: Single-Family Home

Zoning: Agricultural District (AG-1)

The Board of Adjustment, in an action on May 8, 2013, moved to deny the variance. The applicant requested reconsideration of the item within the required 10 days following the effective date of the Board’s decision. Prior to rehearing this request, one Board member on the prevailing side must make a motion to reconsider the item. Any member of the Board may second the motion.

RECOMMENDATION

Planning 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 applicant requests a variance from the zoning requirements to allow encroachment into the minimum side yard setback for a constructed building addition [also referred to as a carport] attached to the house at 226 E. Redfield Road. The subject property is an interior lot in the Tremaine Park Subdivision, located north of the Western Canal and east of Arizona Avenue. Lot sizes in the subdivision range between approximately 33,000 and 84,000 square feet, with most lots being approximately 36,000 square feet in area. The 1,746 square foot house on the property was constructed in 1977 and is located on a 38,355 square foot lot which is a typical sized lot for the subdivision.

The Tremaine Park Subdivision was developed in unincorporated Maricopa County and annexed into the City of Chandler corporate limits in 1988. The City of Chandler zoning district of AG-1 was placed on the subdivision following annexation. The single family home was constructed in 1977 and purchased by the current owner in 1985, prior to annexation. The property did not provide any covered parking until the attached carport was recently constructed. The site contains a fenced swimming pool and two outbuildings.

The subject of this variance is a request for approval for a building addition to encroach into the required side yard setback. The required side yard setback for AG-1 zoned properties is 30 feet. The addition is located approximately 14 feet from the west side property line, an encroachment of 16 feet into the required 30 foot side yard setback. The building addition is in compliance with the required 20 foot front yard setback.

The recently constructed building addition, i.e. a carport, is used for automobile storage. The addition is open to the front and to the rear and is attached to the east wall and roof of the existing residence. No building permits were applied for by the property owner.

The constructed addition is 12 feet in height at the peak with a width of 28 feet and depth of 19 feet. A minimum area of 18 feet by 19 feet would be required to accommodate two parking spaces. The building materials include heavily textured stucco walls that match the existing exterior walls and asphalt shingles of same color and style as the existing roof. The applicant is proposing to paint the carport to match the color of the main dwelling. The addition's roofline matches the slope of the existing home and is slightly higher than the existing main dwelling's roof peak.

Planning Staff notes that the Zoning Code requires two covered parking spaces per single-family residence. Covered parking spaces were not required prior to 1983 for single-family homes, at which time the current regulation of two covered spaces was established.

A City of Chandler building inspector issued a courtesy notice for the building addition being constructed without a City permit or zoning approval.

CODE REQUIREMENTS

Setbacks for the Tremaine Park subdivision are established by the Agricultural (AG-1) zoning district:

35-403. Height and area regulations.

(3) Side yard:

(a) Interior lots: Each side yard shall not be less than 30 feet.

FINDINGS

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

- 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 38,355 square foot lot is a typical size and shape for this neighborhood. The lot size is average for the neighborhood. There are no special circumstances that apply to the property which do not apply equally to other properties in the neighborhood. The building addition was constructed without submittal of building plans or verification of setbacks. The lot has no physical constraints that restrict the property's use as planned or zoned. Planning 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 owner has enjoyed substantial property rights since the home was purchased in 1985. It is not a property right to build an addition and violate the minimum setbacks. Planning 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 building additions that do not abide by zoning regulations. Planning Staff is of the opinion that this criterion has not been satisfied.

PUBLIC/NEIGHBORHOOD NOTIFICATION

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

SUMMARY

Planning 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 that would prevent the

enjoyment of substantial property rights. The property has been substantially developed, with its property owners enjoying development rights since 1985.

Granting a variance for this property would, in Planning 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

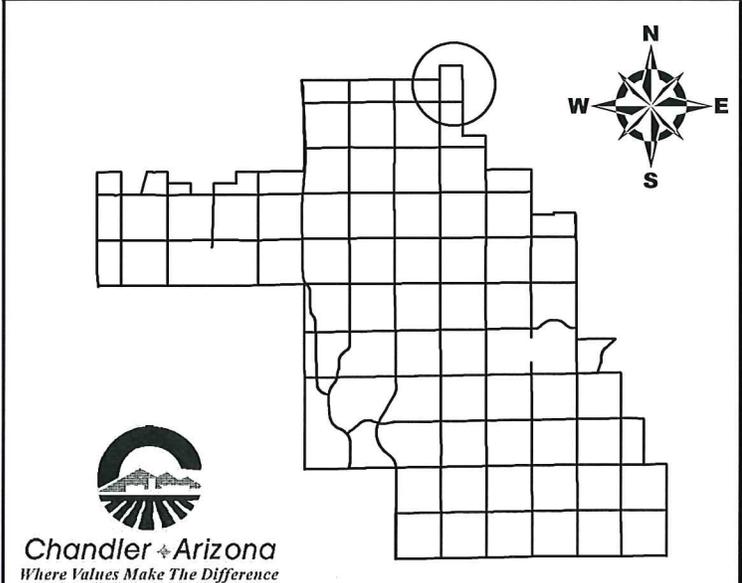
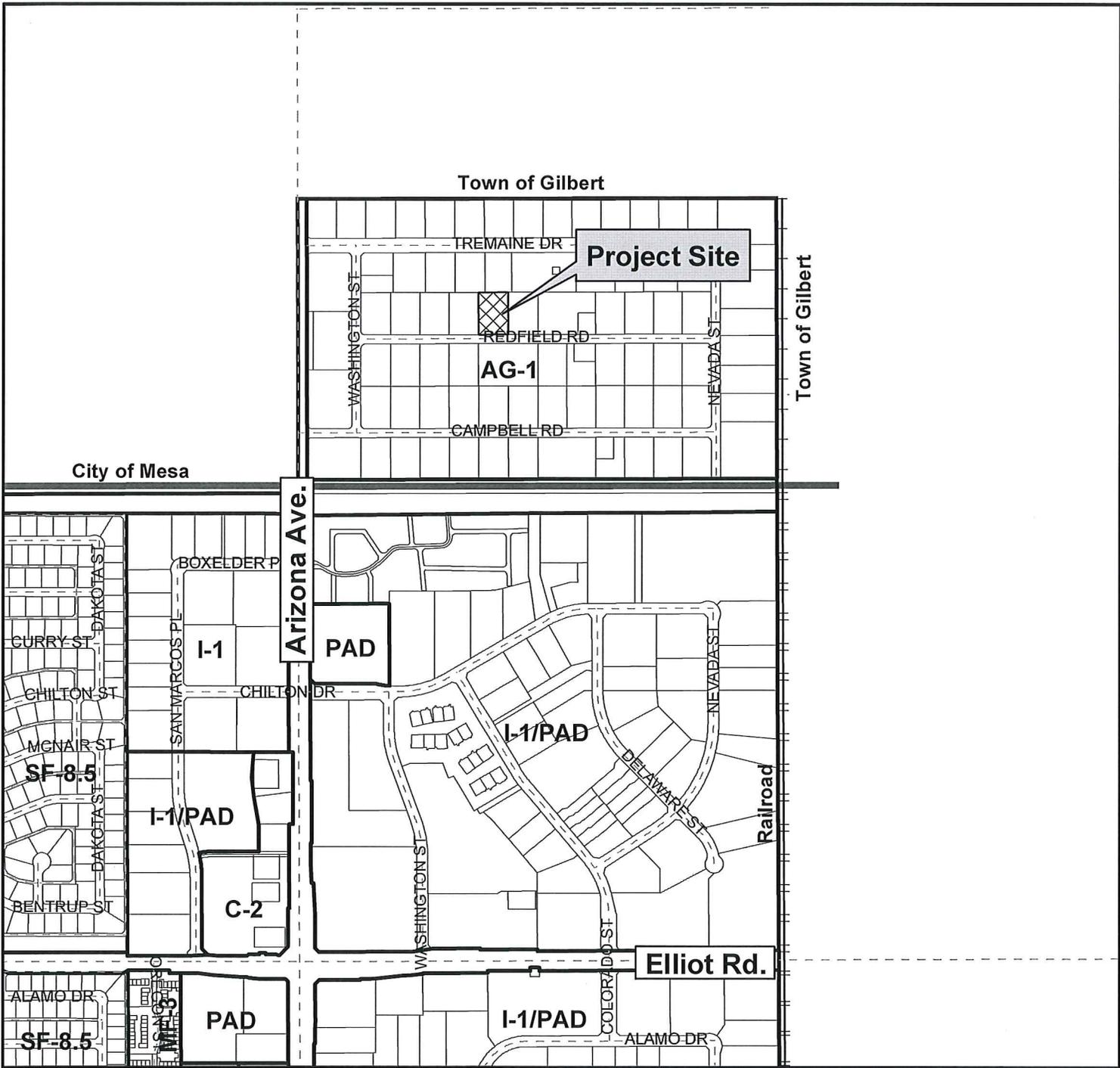
Planning Staff recommends denial of this request.

PROPOSED MOTION

Move to deny the variance request VAR13-0003 ROJAS RESIDENCE, as recommended by Planning Staff.

Attachments

1. Vicinity Maps
2. Aerial
3. Application and Justification
4. Site Plans
5. Photos
6. Request for reconsideration letter
7. Powers and Duties

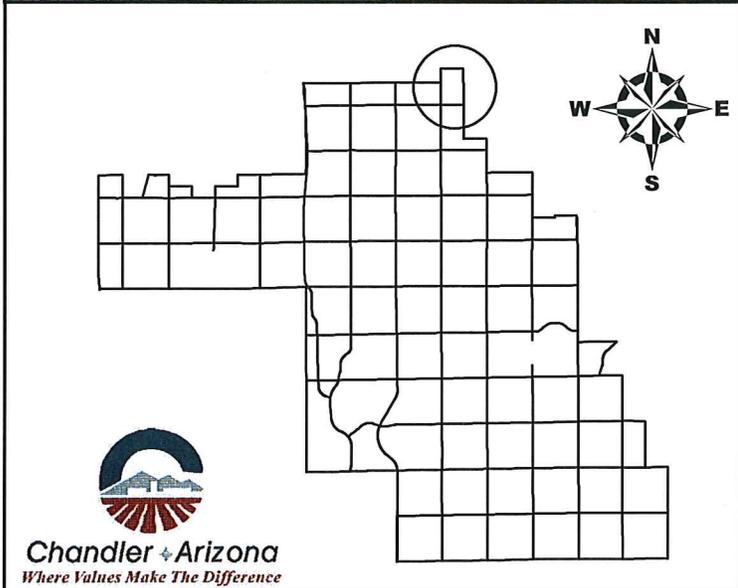


Vicinity Map

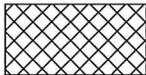
 **VAR13-0003**

Rojas Residence
226 E. Redfield Rd.

CITY OF CHANDLER 2/20/2013



Vicinity Map

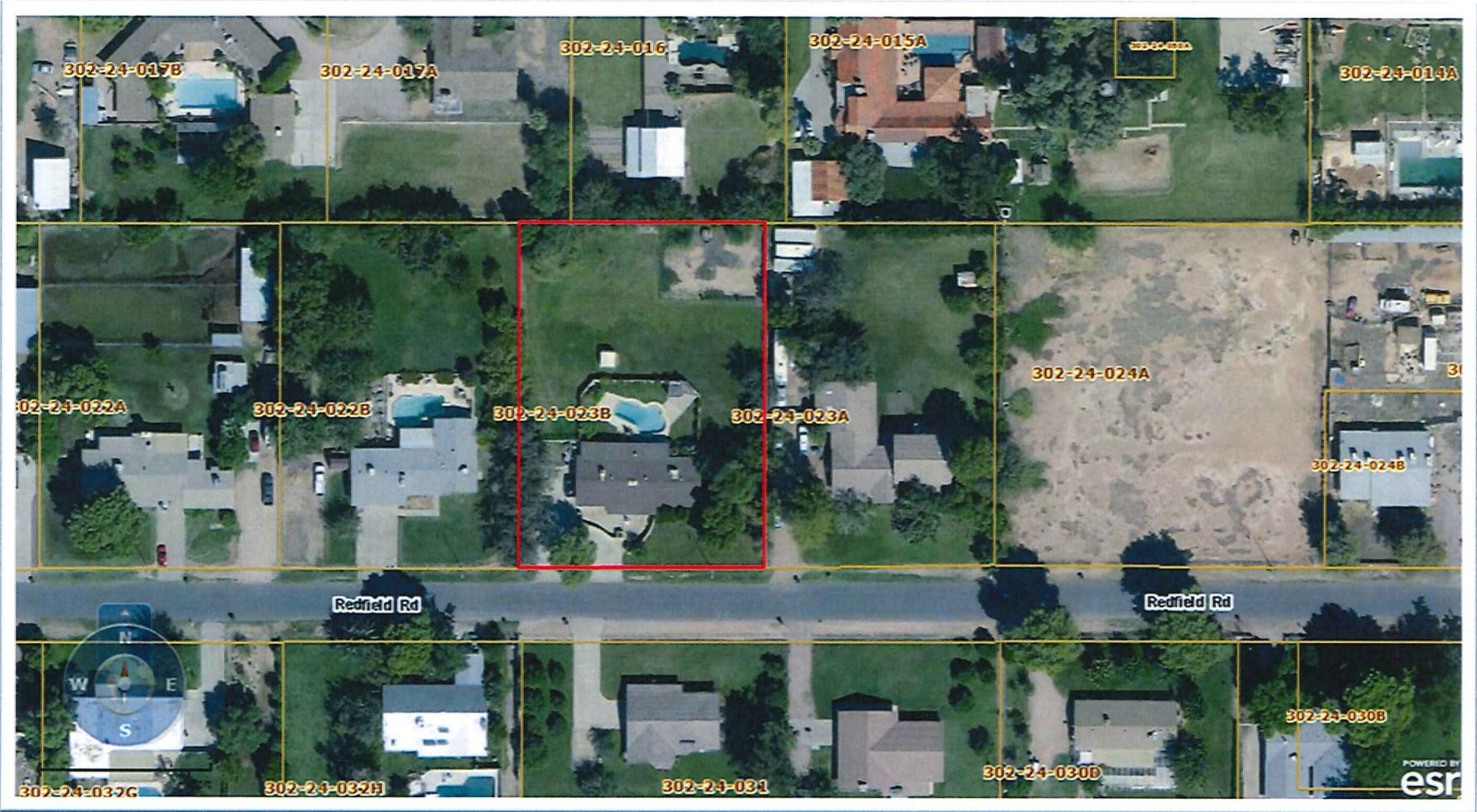


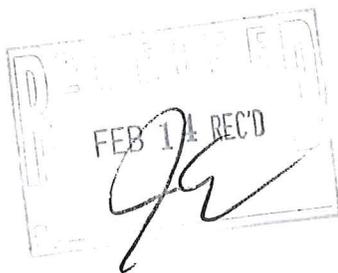
VAR13-0003

**Rojas Residence
226 E. Redfield Rd.**



VAR13-0003 AERIAL MAP





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 <i>ANTHONY A. ROJAS</i>		
Property Location/Address <i>226 E. REDFIELD RD.</i>		City, State, Zip Code <i>CHANDLER, AZ 85225</i>
Type of Variance (waiver) from the Zoning Code you are requesting: <i>VARIANCE DISTANCE BETWEEN PROPERTY LINE AND CARPORT STRUCTURE. FINAL DIMENSION IS 14 FT VERSUS 30 FT ON WEST SIDE OF PROPERTY. ZONING FOR AG-1 REQUIRES 30 FT WHICH I WAS NOT AWARE OF AND CONSTRUCTED IN ERROR.</i>		
Is this variance for an existing structure (e.g. fence, pool, etc.)? Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/> <i>RECENTLY CONSTRUCTED</i>		
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>ANTHONY A. ROJAS</i>		
Mailing Address <i>226 E. REDFIELD RD.</i>		Phone Number <i>602-809-1098</i>
City, State, Zip Code <i>CHANDLER, AZ. 85225</i>		Fax Number
Applicant/Representative Name <i>SAME AS ABOVE</i>		
Mailing Address		Phone Number
City, State, Zip Code		Fax Number
Property Owner or Representative Signature <i>[Signature]</i>		Date <i>2/14/13</i>
For City Use		
Date Filed <i>2/14/13</i>	Development No. <i>VAR13-0003</i>	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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Where Values Make The Difference

Variance Request Letter of Authorization

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

226 E. REDFIELD RD.

CHANDLER, AZ, 85225

Assessor's Parcel Number(s):

PARCEL # 302-24-023-B

Said property is owned by:

ANTHONY A. AND YVONNE M. ROJAS

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.


Applicant Signature

2/14/13
Date

ANTHONY A. ROJAS
Property Owner Name Printed

2/14/13
Date


Property Owner Signature

2/14/13
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.

AT THE TIME OF PROPERTY PURCHASE THE SUBDIVISION WAS IN THE COUNTY. SHORTLY AFTER I PURCHASED PROPERTY 30 YRS AGO I INSTALLED A SLAB AND FOOTING TO COUNTY STANDARDS. THE AREA WAS ANNEXED BY CITY OF CHANDLER. I UNDERSTOOD WE WERE GRANDFATHERED ON REQUIREMENTS BASED ON ALL THE VARIANCES EXISTING IN SUBDIVISION. THE STRUCTURE I INSTALLED IS FOR CARPORT USE ONLY. NO ELECTRICAL OR MECHANICAL INSTALLATIONS WERE MADE. THE DESIGN WAS TO BUILD 15 FT OFF PROPERTY LINE BASED ON ORIGINAL SLAB AND FOOTING. ACCORDING TO CHANDLER REQUIREMENTS AG-1 PROPERTIES SHOULD BE 30 FT OFFSET.

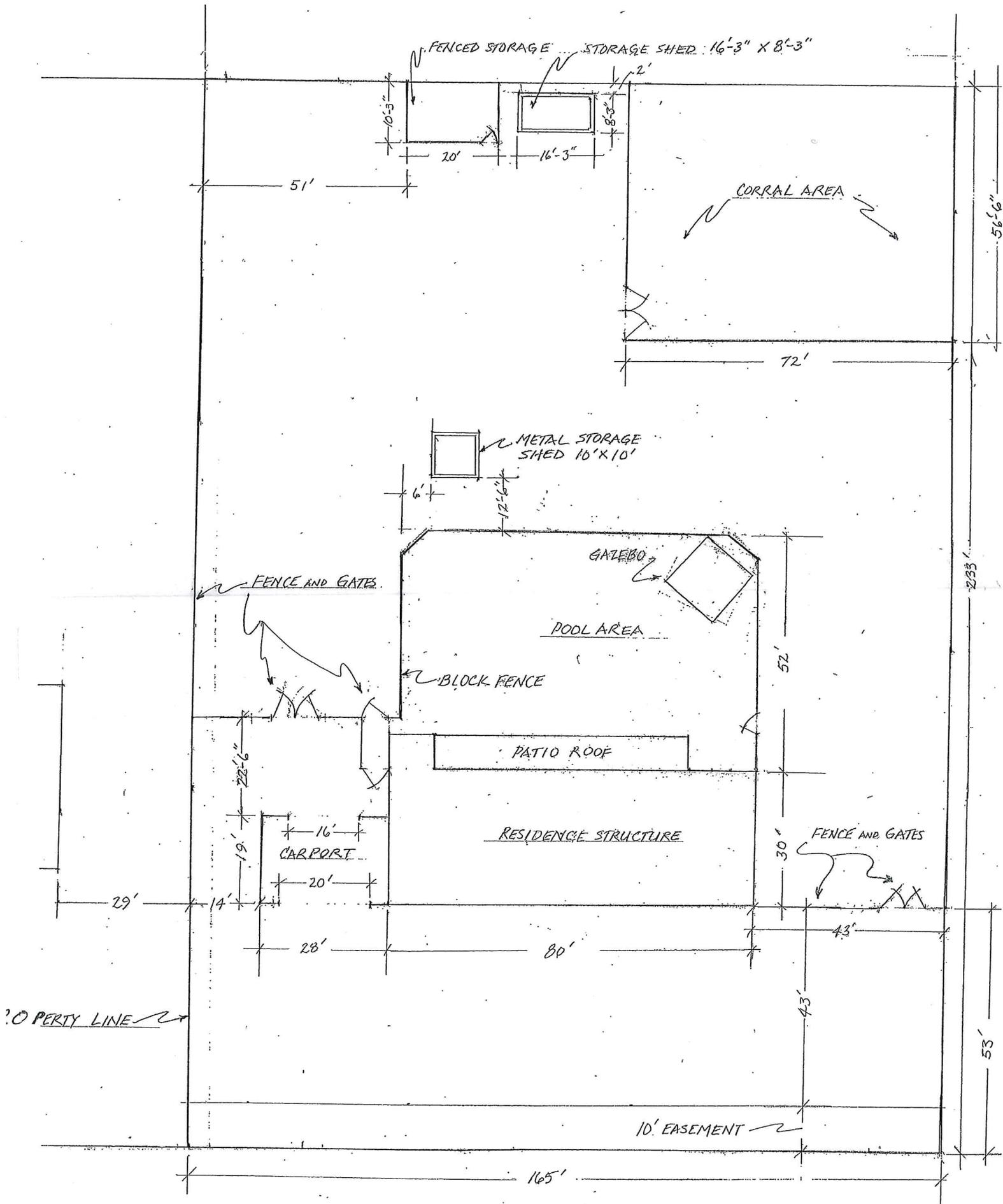
2. State why the granting of this variance is necessary for the preservation and enjoyment of substantial property rights.

THE PROPERTY IS AN ACRE PARCEL WITH A RESIDENCE STRUCTURE WITHOUT ANY COVERED PARKING. I WAS TRYING TO MAXIMIZE THE USE OF MY PROPERTY AND YET MAINTAIN ACCESS TO BACK OF ACRE. I RECENTLY RETIRED AND DECIDED TO BUILD THE CARPORT AFTER ALL THESE YEARS AND DID NOT CHECK ON THE REQUIREMENTS. TO MY KNOWLEDGE I AM NOT IMPACTING ANY OF THE ADJACENT NEIGHBORS AND THEY SEEMED AMICABLE TO BUILDING THE STRUCTURE. I REQUEST THIS VARIANCE TO MAINTAIN THE COVERED PARKING AND MY INVESTMENT.

Justification for Variance Request (Cont'd)

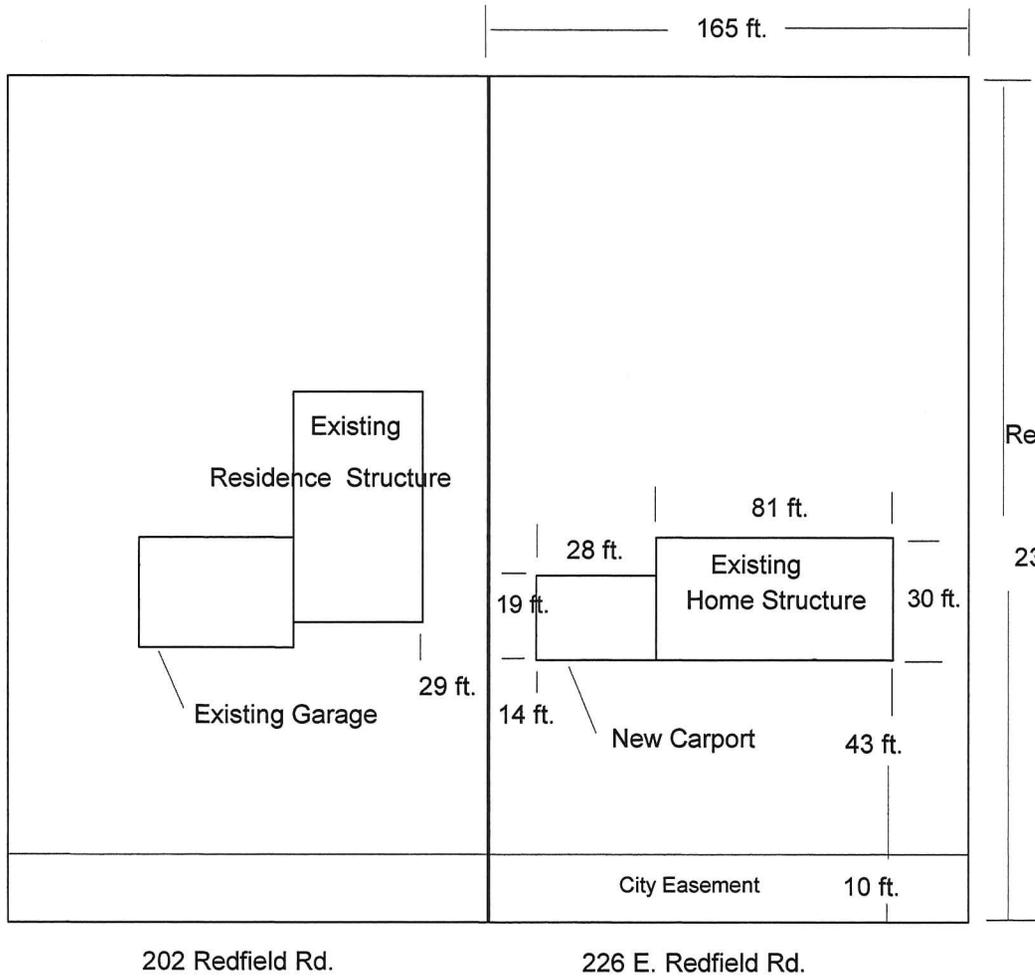
3. Explain why this variance will not materially be detrimental to persons, property, or the public welfare of the community.

THIS SUBDIVISION IS A RANCH PROPERTY SUBDIVIDED INTO 1-2 ACRE PARCELS. IN THE 1970'S, THE LOTS TYPICALLY HAVE FENCING ON PROPERTY LINES AND AREAS WITHOUT FENCING HAVE SUFFICIENT SPACE BETWEEN STRUCTURES. PRIOR TO CHANDLER ANNEXING THE COUNTY WAS NOT VERY STRICT ON CONSTRUCTING STRUCTURES. THERE ARE OTHER PROPERTIES WITH EXISTING STRUCTURES IN CLOSE PROXIMITY OF PROPERTY LINES AND VARIANCES FROM OFFSETS. ON THIS REQUEST THERE IS 14 FT FROM NEW STRUCTURE TO PROPERTY LINE AND A TOTAL OF 43 FT TO CLOSEST ADJACENT PROPERTY STRUCTURE. ALSO THERE IS A FIRE HYDRANT FROM FRONT STREET 150 FT. AWAY, WHICH WOULD ALLEVIATE CONCERNS ON STRUCTURE FIRE PROXIMITY. TO MY KNOWLEDGE THE ADJACENT NEIGHBORS DO NOT SEE A DETRIMENT TO THEIR STRUCTURES.

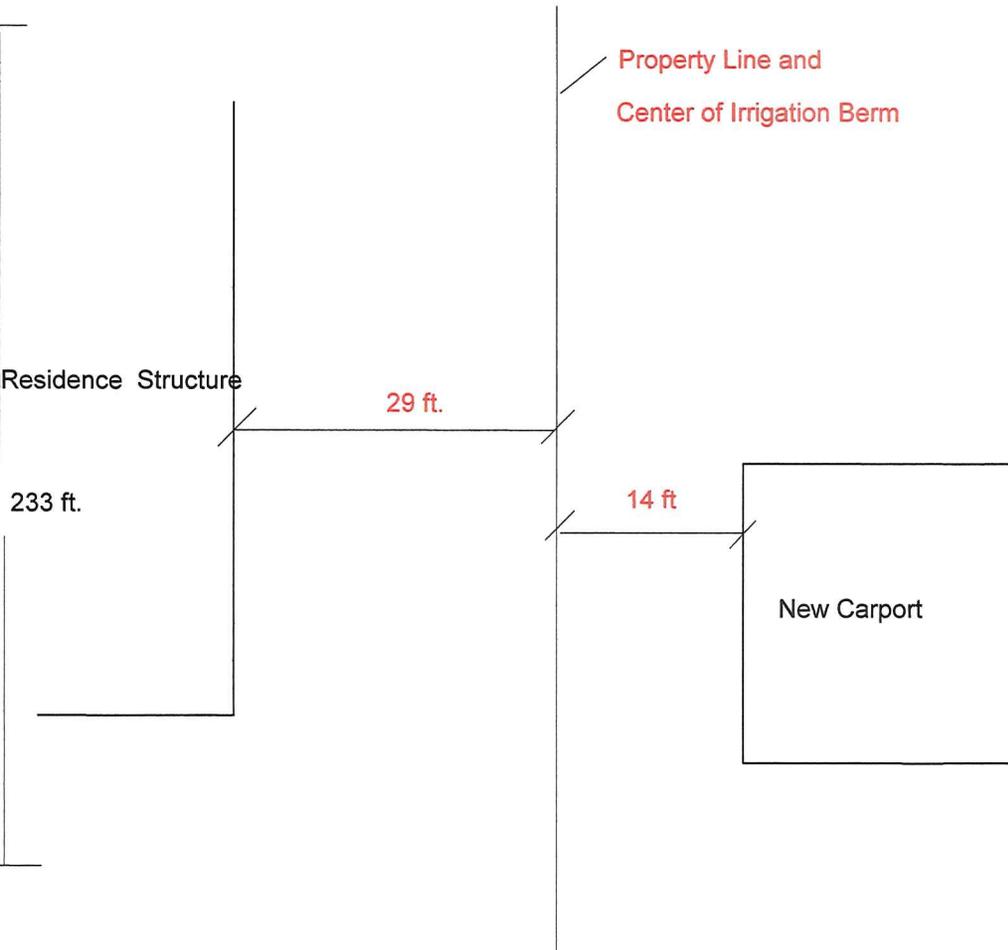


REDFIELD RD.





Redfield Road



Variance Area Blow up

SITE PLAN

Scale: 1/16" = 10'

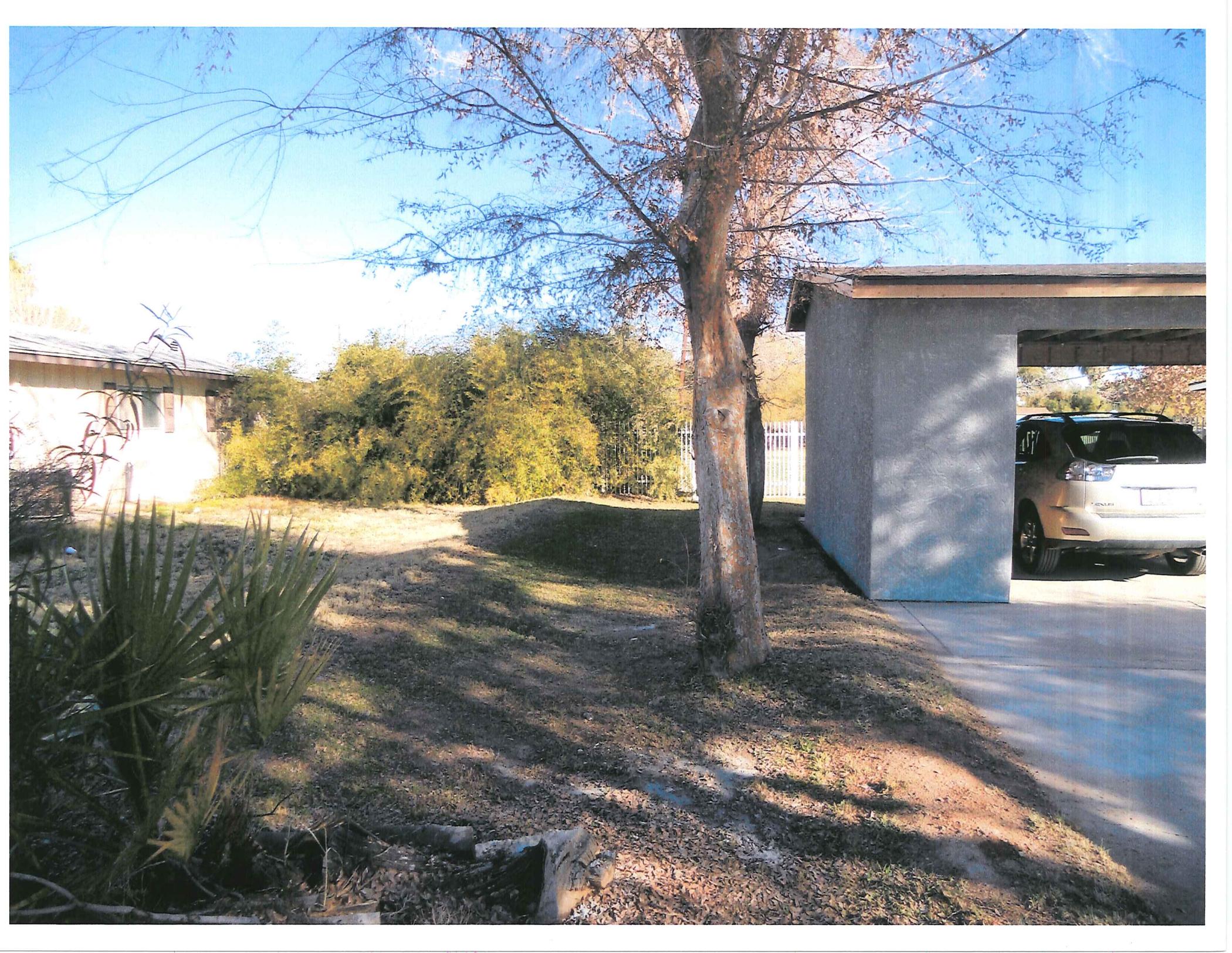
ROJAS CARPORT STRUCTURE

226 E. REDFIELD RD.
CHANDLER, AZ, 85225

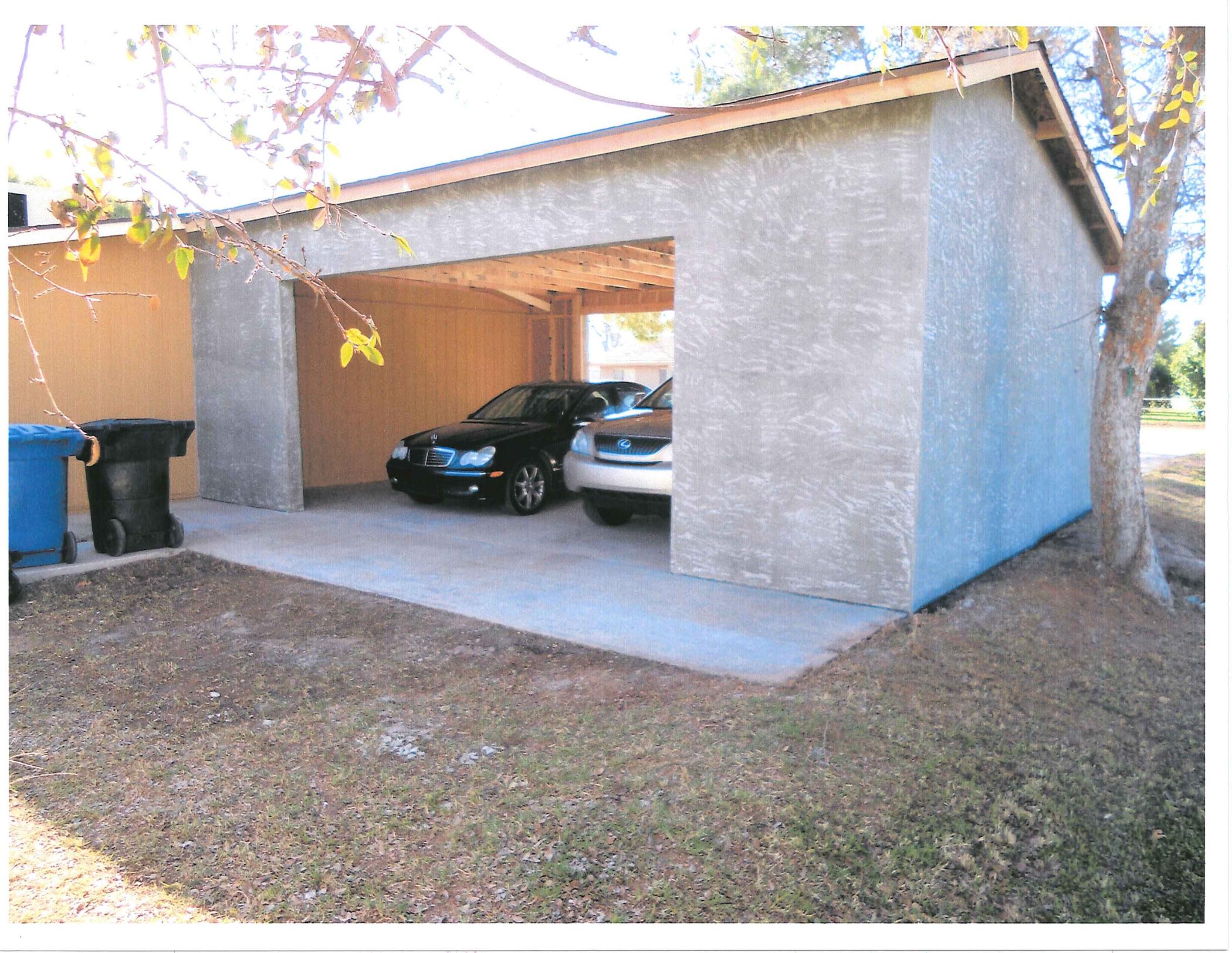


NORTH











West Side Yard



Rear (North)
Elevation



West Elevation
of Carport



South (Front)
Elevation

Mr. Glen Brockman

5/22/13

City Planning Division
Mail Stop 602
P.O. Box 4008
Chandler Az 85244-4008

Dear Mr. Brockman,

Thank you for responding to my inquiry. I received the information today at 3:35 pm. The information you provided was very helpful. If I understand the information, the BOA rules give any interested person 10 calendar days from the BOA's to file a written request for consideration with the zoning administrator (Planning department). I would like to request such reconsideration and would like for my written request to be mailed to each Board member.

My request is to reconsider the denial of the variance for the offset of the structure at my residence. (See VAR13-0003) The primary reason is due to the questions prior to a decision being made which were not answered. The hearing Board Member Mr. Jim Ryan asked the question: "Were there any other variance requests that have been approved in this subdivision?" The response received was there was one. When he asked: "What was it for?" the staff indicated they didn't know. However, the records show and should have been known to the staff that in fact the BOA approved variance request (VAR06-0014) which was a very similar situation which requested a variance from the side setback. Prudent research would have identified this information. This variance was a total of 28 ft. into the setback only leaving 2 Ft. from the property line. The Building was a 44ft. by 15 ft. Structure or 660 SQ. Ft structure which was 15Ft. Tall. This a lot larger structure and a lot closer to the property line than my situation. During the proceedings the Staff indicated the Board could not approve any variance not according to the zoning law. However, it is clear the BOA has approved an exception based on the unusual nature of the subdivision and the response from neighbors that supported leaving the structure. It is my belief the Board may have considered my variance request approval had the history of the subdivision approved variance been brought forward.

I understand I may have to go to the Superior Court to have the case reviewed and may have to hire an attorney. My request is also to stop the clock on the compliance deadline if there is any possibility of the BOA hearing my request at the next meeting, and the fact that I may have to get a hearing scheduled in Superior court which could take a considerable amount of time based on court workload.

Please let me know if there is anything else I must do in order to stay the Compliance Order of 30 days in order to prevent any citation. Should I call Mr. Don Slomcinsky, the Compliance Officer, to see if they can put a hold on the deadline for now? Please contact me by email at aarojas47@cox.net or by phone at 602-809-1098. Thanks for your consideration.

Respectfully submitted,

Anthony A. Rojas

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.