



MEMORANDUM Transportation & Development – BA Memo No. 13-009

DATE: DECEMBER 11, 2013
TO: BOARD OF ADJUSTMENT
THRU: R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR
 JEFF KURTZ, PLANNING ADMINISTRATOR
 KEVIN MAYO, PLANNING MANAGER *KA*
FROM: SUSAN FIALA, CITY PLANNER *SFP*
SUBJECT: VAR13-0006 FAZIO RESIDENCE

Request: Variance from the Zoning Ordinance to allow an existing wall located in the front yard to exceed the maximum permitted height

Applicant: Chuck and Angela Fazio

Location: 6998 South Wilson Drive, north of Hunt Highway and west of Gilbert Road

Existing Use: Single-Family Home

Zoning: Planned Area Development (PAD)

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 ordinance to allow an existing wall located in the front yard to exceed the maximum permitted height [Zoning Code Section 35-2204]. The property is located at 6998 South Wilson Drive, north of Hunt Highway and west of Gilbert Road.

The subject property is located in the Sun River subdivision. Parcel C of the Sun River subdivision contains 88 lots and was developed in the City of Chandler. Lot sizes in the subdivision range between approximately 8,000 to 10,500 square feet (sq. ft.). The approximate 8,600 sq. ft. rectangular shaped lot is a typical sized lot for the subdivision. The lot is located

adjacent to Hunt Highway to the south. An open rail fence, approximately 3 ft. high, runs parallel to the Hunt Highway frontage. This fence has a gap adjacent to the subject property's six ft. high perimeter wall which allows pedestrian access into the subdivision. Gates are located on each side of the home for rear yard access.

The single-family home was constructed in 2003 and has approximately 2,995 square feet of livable area. The property contains a swimming pool in the rear yard. The current property owner purchased the home in 2011.

The subject of this variance is a request for approval of an existing wall to exceed the maximum permitted height of three (3) ft. located in the front yard. The wall was built in March of 2013. The wall creates a courtyard in the front area of the lot. The wall design is a combination of stone columns and decorative wrought iron railing with iron gates. The stone used on the columns matches the stone on the home. The height of the wall is five (5) ft. which exceeds the maximum permitted height by two (2) ft. Building permits are not required for fences six feet or less in height. However, walls located in the front yard are not permitted to exceed three feet in height.

The City of Chandler Code Inspector issued a notice to comply in July of 2013.

CODE REQUIREMENTS

The regulations for fences and walls are established in the following section of the Zoning Code:

35-2204. General.

- (8) (a) No fence or wall shall be constructed in the front yard of a lot in a residential district exceeding a height of three (3) 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 approximate 8,625 square foot lot is a typical sized lot for this neighborhood and is rectangular in shape. The special circumstance is the adjacency of the lot to Hunt Highway. However, the use of the front yard as a courtyard is a self-imposed condition. The wall was constructed without verification of height requirements. The lot has no physical constraints that restrict the property's use as planned or zoned. The construction of the wall is self-imposed. Planning Staff is of the opinion that this criterion has not been fully 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

2011. It is not a property right to build a wall and violate the maximum height requirements. 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 walls in the front yard 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 noticed in accordance with the requirements of the Chandler Zoning Code.
- At the time of this writing, Planning Staff has received several telephone calls from neighbors. Two neighbors stated their opposition and the other callers are in support of the request.

SUMMARY

Planning Staff does not support this request. Although this lot is adjacent to Hunt Highway and the front of the home is in direct view of the highway, the use of the front yard as a courtyard is a self-imposed condition applicable to this property that does not apply equally to similar properties in the surrounding area. The requirement to meet the height requirements is not a hardship for this property that would prevent the enjoyment of substantial property rights. The property has been substantially developed and enjoying development rights since the owner purchased the home in 2011.

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

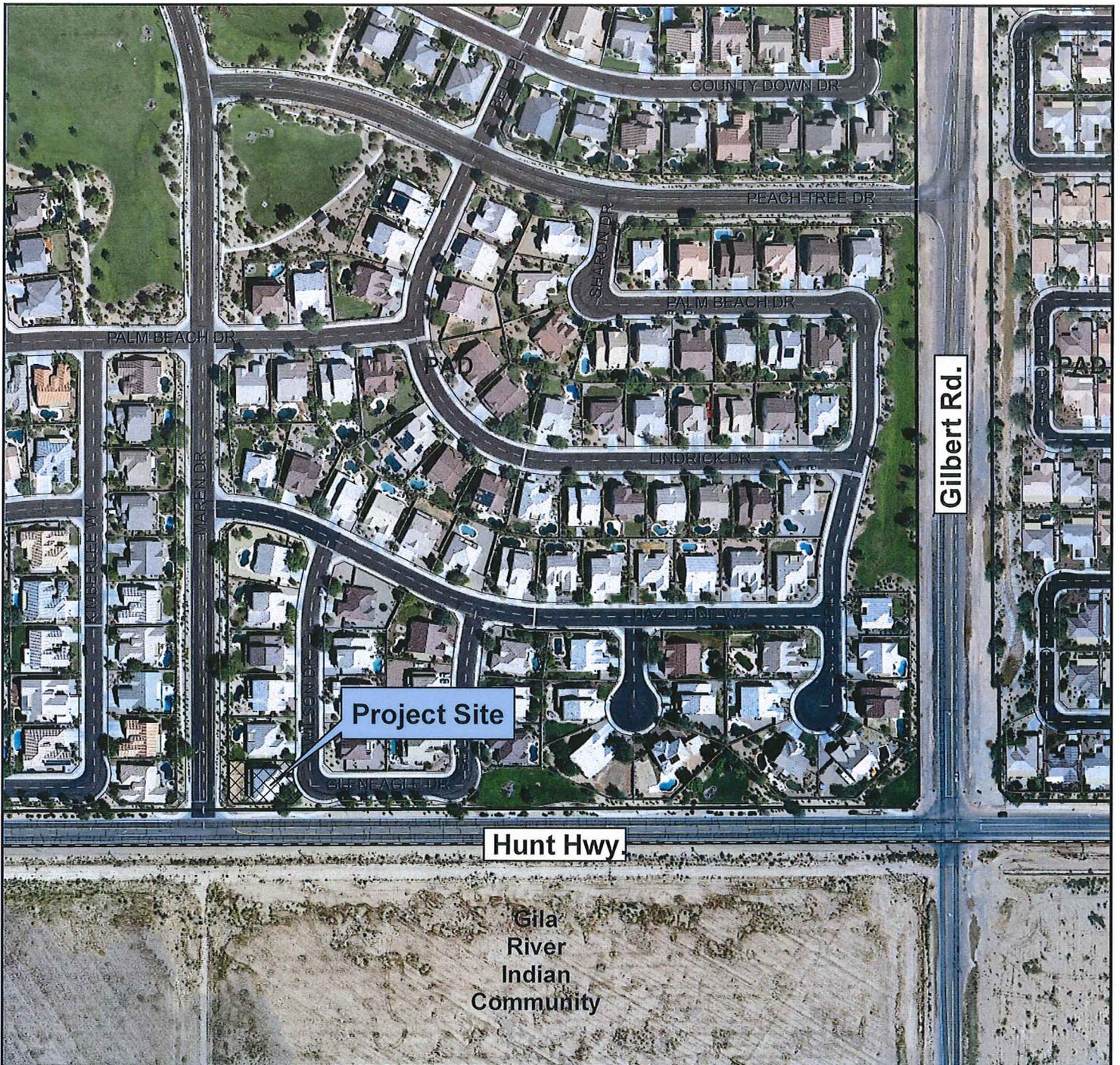
Planning Staff recommends denial of this request.

PROPOSED MOTION

Move to deny the variance request VAR13-0006 FAZIO RESIDENCE, as recommended by Planning Staff.

Attachments

1. Vicinity Maps
2. Aerial
3. Applicants Justification and Contractor's comments
4. Sun River Homeowners Association letter
5. Site Plan
6. Wall and Gate Elevation
7. Applicant's Photos
8. Powers and Duties

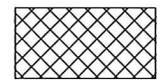
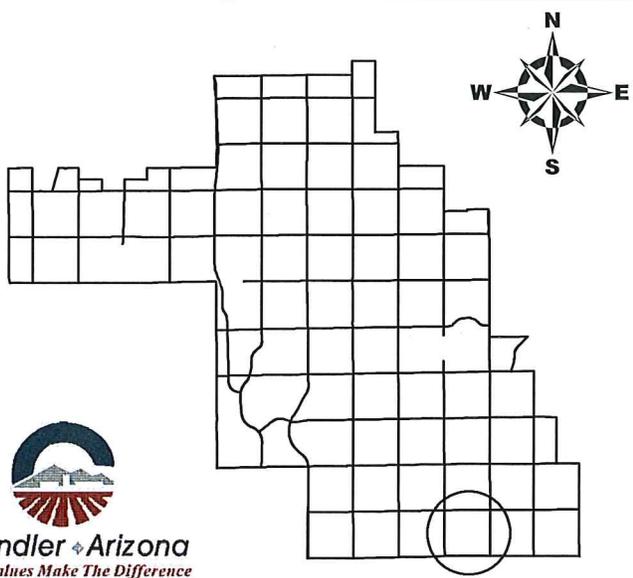


Project Site

Hunt Hwy

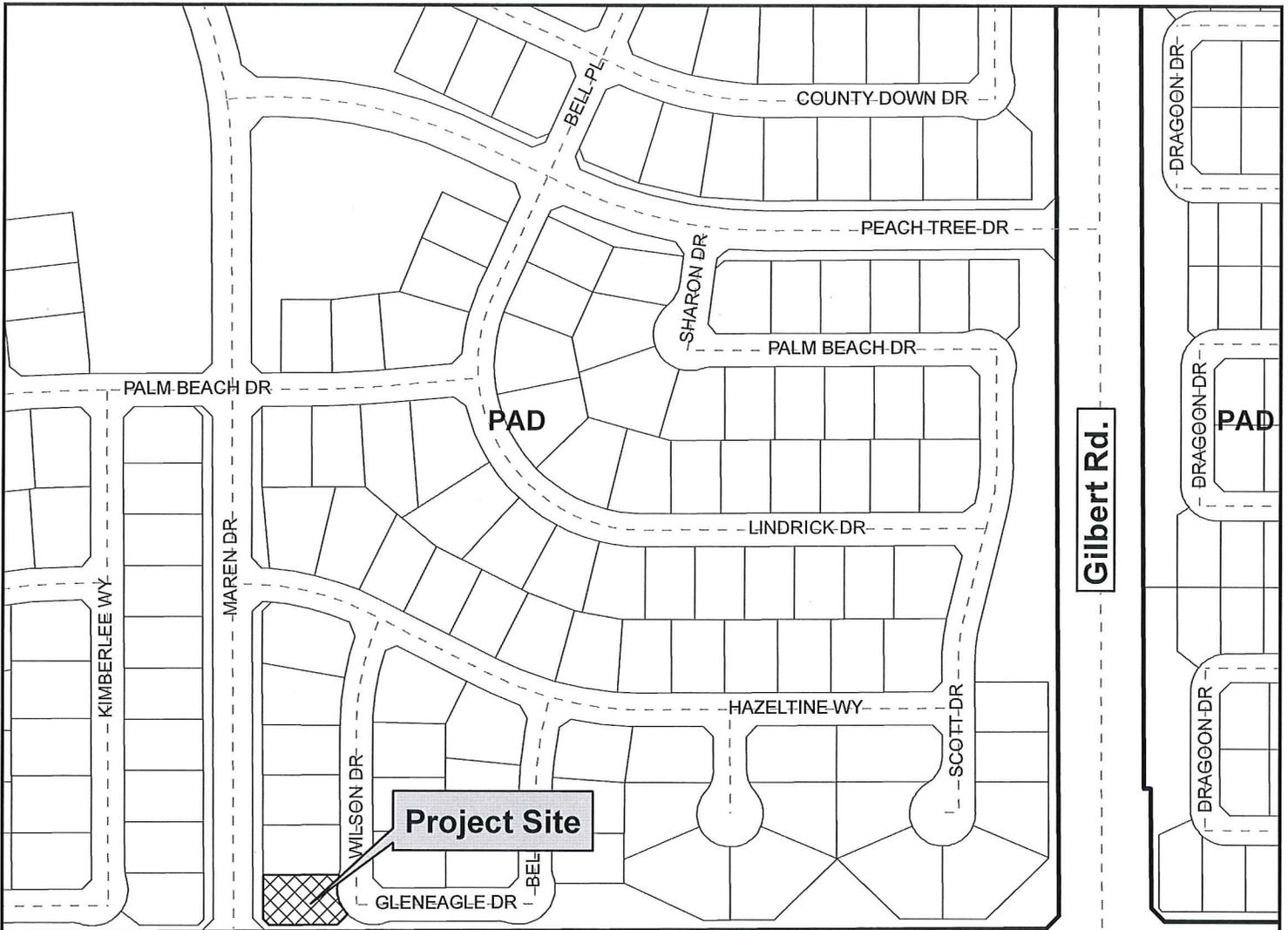
Gila River Indian Community

Vicinity Map



VAR13-0006

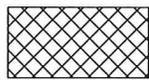
**Fazio Residence
6998 S. Wilson Dr.**



Hunt Hwy.

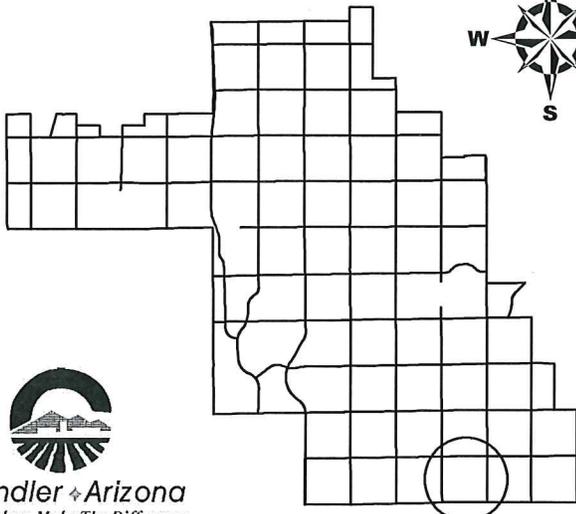
**Gila
River
Indian
Community**

Vicinity Map

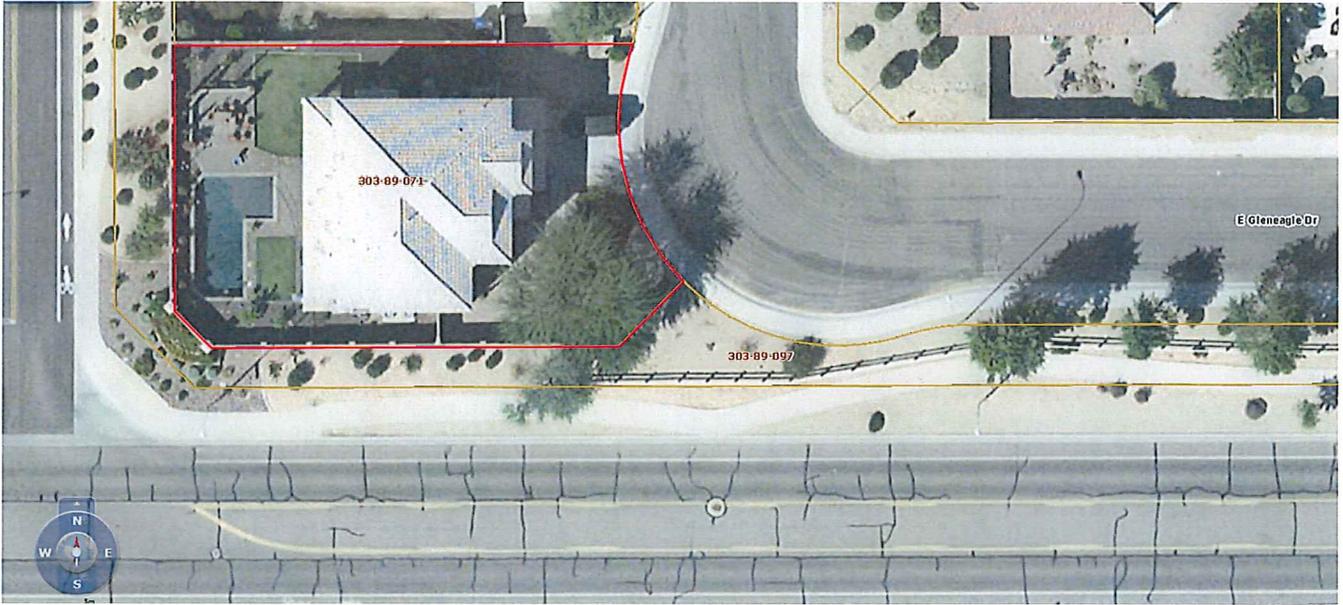


VAR13-0006

**Fazio Residence
6998 S. Wilson Dr.**



AERIAL
FAZIO RESIDENCE



Answers to Application Questions

6998 S Wilson Drive, Chandler AZ 85249

Background: We had our courtyard constructed in March of 2013. We hired a licensed general contractor – Bingham Build, LLC – 623-262-4272 (Ryan Bingham), a licensed architect – M Burton Design, LLC – (602)354-4647, (602)697-3720 (Mark Burton) and we gained the full approval of the HOA. We have attached the architect's design as well as the HOA approval letter. None of these professionals knew about the 3ft maximum height for the front yard. We feel like we made every reasonable effort to construct properly. Furthermore, the city told us that we did not need permits for a wall less than 6 feet tall.

1. Explain the special circumstances or conditions that apply to the land, building or use referred to in the application.

Our lot is sided to Hunt Hwy. We have attached pictures for your review. In front of our house, there is a partial white picket neighborhood fence between our street and Hunt Hwy. Furthermore, there is an opening in that fence. We are the only house in our neighborhood that sides to Hunt Hwy like this. One of the reasons for us to construct the fence we did is to prevent the small children in our family and our dogs from having direct access to Hunt Hwy. This is an extremely busy road and there is no other barrier blocking access.

When we first moved into the home, what caught our attention was this: One day, one of our small children was playing out front with a friend with a ball. The ball got overthrown and went onto Hunt Hwy. They actually went to run out onto Hunt Hwy to get the ball.

We also constructed the fence as a security measure.

We are in the process of adopting additional children (we have 4 of our own). A part of that process is a home inspection. We are evaluated on the quality of our home in terms of size (accommodation of additional children) and safety. We are firmly convinced that having the secured courtyard will assuage the fears of the inspectors about our proximity to such a busy highway. We are greatly concerned about clearing up this variance prior to our home inspection. We do not want to be denied the opportunity to adopt based on an inspector's concern about the highway.

In addition, people frequently use the opening in that fence (the white picket one mentioned above) to access Hunt Hwy by foot and bike. Before we re configured the front yard, some people crossed our property to access Hunt Hwy.

Our lot is unique in that we only have one neighbor. The neighbor we have on the north is not affected by our courtyard as it is on the Southeast part of

our lot. We have no neighbor to the south, none behind and none across the street. See pictures.

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

If we were to have to lower the height of the structure, what is now a beautiful and aesthetically pleasing structure would be, in our opinion, an eyesore. We are both in Real Estate. We own the largest brokerage in production in the east valley and understand property values extremely well. We know that the quality of the construction of our courtyard has significantly affected how our block looks in a positive way. We have greatly improved the value of our property and thus we are helping to preserve property values in our neighborhood.

Without this variance, we would not only experience a financial hardship to remedy the height, we would also suffer the affect of our home value being lowered.

By lowering the height of our fence, we would negate the security for our children (and those we want to adopt) to prevent such open access to Hunt Hwy. See notes on question #1.

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

There isn't a neighbor that is affected negatively by our construction. Please see the pictures and notes above about how our lot is situated. Since we have finished construction, we have had literally dozens of neighbors from near and far ask about who did our work. Many ask to take pictures. We have received accolades for raising the value in our little neighborhood. Three homes on our same street have made significant improvements to their properties as a result of what we have invested into ours.

Contractor response to ordinance complaint at:
Fazio Residence
6998 S. Wilson Dr.
Chandler, Az. 85249

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 special circumstances or conditions that apply to the landscape fence are as follows:

- a. The fence is addition to an already existing front yard fence. The existing fence was constructed at or near the time of the home. This architectural wall was built by the home builder or developer to protect the property from adverse weather, wildlife and or traffic.
 - i. This property borders a main highway (Hunt Hwy) with vehicles traveling at high speed. The additional landscape fence in question will further protect the home owners, children and guests from death and/or injury due to possible driver error. This wall addition will also provide further privacy from vehicle and pedestrian travel along this highway
 - ii. The property borders open fields (agriculture). This front yard fence addition will further protect the property and individuals on the property from blowing dust/debris and wildlife.
2. State why the granting of this variance is necessary for the preservation and enjoyment of substantial property rights.

The landscape fence is necessary for the preservation of substantial property rights:

- a. The city ordinance reads that "Fences, walls and landscape screens not exceeding seven (7) feet in height adjacent or contiguous to rear and side yard lines and not to exceed three (3) feet in height adjacent or contiguous to the front yard lines".

The landscape fence is neither adjacent nor contiguous to the front yard lines. This fence is more than 12 feet away from front yard lines and is not contiguous to the property line.

- b. This (courtyard) fence is necessary for the privacy, security and protection of homeowners and individuals on the property. The fence further protects homeowner animals from wildlife, traffic, pedestrians and day to day activity. The fence allows necessary exercise needed for homeowner animals due to restrictions in the back yard.

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

The courtyard wall in question will only provide benefit to all persons, property, or the public welfare of the community. The fence will protect persons on and off the property. It provides value to the neighborhood and promotes additional outdoor enjoyment which fosters neighborhood camaraderie and watch.

Response prepared by:

Ryan Bingham - President
Bingham Build, LLC

Sun River Homeowners Association
3930 S. Alma School Road, Suite 10
Chandler, AZ 85248
P. 480-704-2900

NOTICE OF APPROVAL
Sun River Homeowner's Association

Chuck & Angela Fazio
6998 S Wilson Dr
Chandler AZ 85249

March 06, 2013

RE: Acct. #: SRH0320 / Lot #: C-065
6998 S Wilson Dr

Dear Owner:

Your Submittal to the Architectural Committee has been approved. Specifically, you have approval to proceed with the following:

Front courtyard fenced in, pool grade fencing/gates, separated with columns covered with ledgestone. Grass front. Inside courtyard is paved with Mediterranean blend cobblestone. Landscaping with include at least 5 mature cypress trees, another mature tree in front yard, pots with seasonal flowers, low lying hedges in front of fencing and inside courtyard. Inside courtyard, moderate water feature. Cobblestone driveway where existing is now plus an extension in front of RV gate.

We reserve the right to make a final inspection of the change to make sure it matches the Submittal you submitted for Approval. Please follow the plan you submitted or submit an additional Submittal form if you cannot follow the original plan.

You must follow all local building codes and setback requirements when making this change. A Building Permit may be needed, which can be applied for at the City offices. **All building permits for this Architectural Request must be submitted to Premier Community Management prior to the start of construction.**

We appreciate your cooperation in submitting this Submittal for Approval.

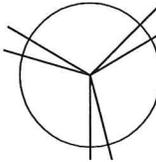
Sincerely,

Sun River Homeowner's Association Architectural Committee



ISSUED FOR	DATE
DESIGNED BY	DATE
CHECKED BY	DATE
APPROVED BY	DATE
PROJECT	
SHEET	L-1
OF	2

PLANT LEGEND

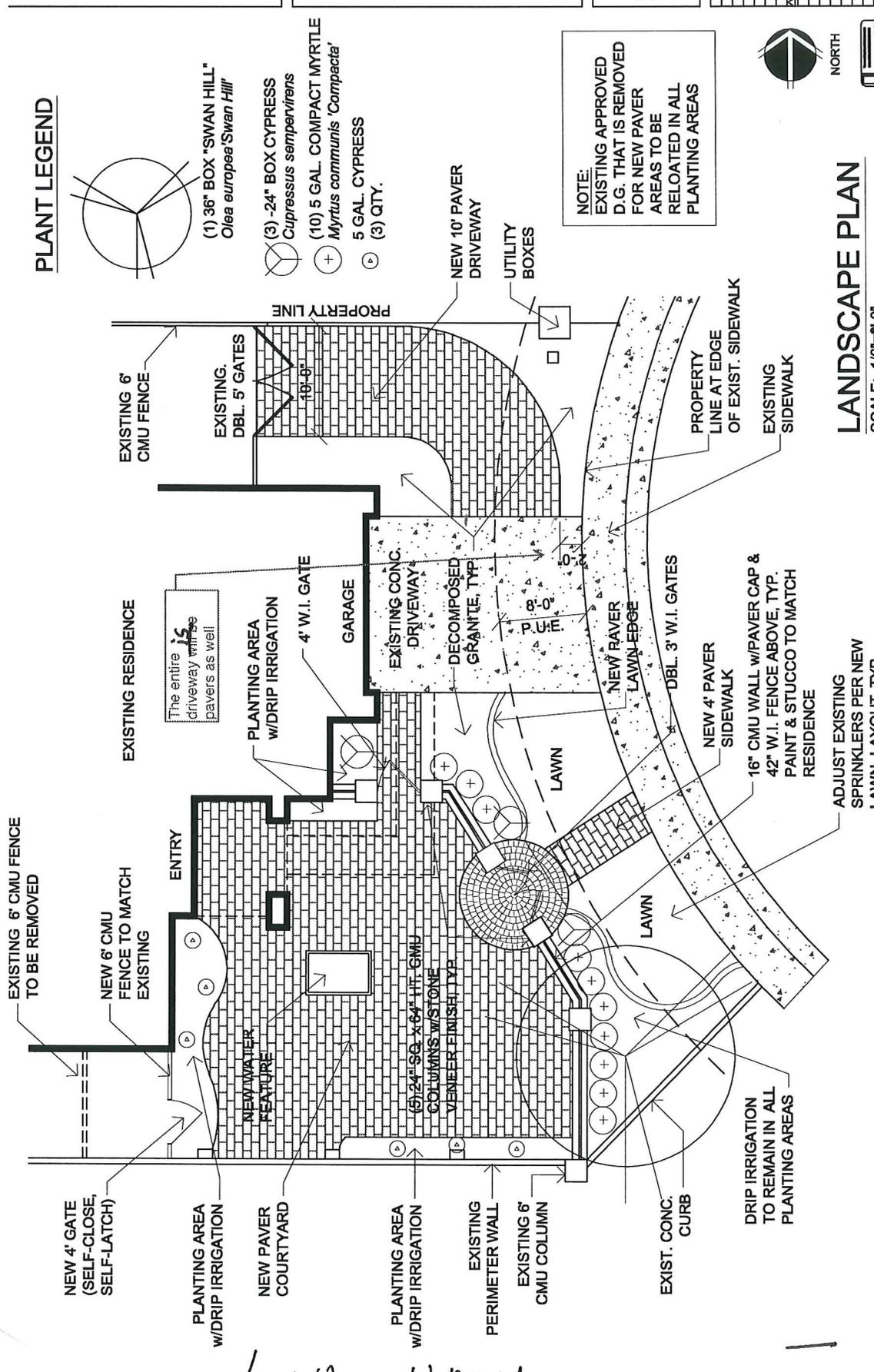


- (1) 36" BOX "SWAN HILL"
Olea europea 'Swan Hill'
- (3) -24" BOX CYPRESS
Cupressus sempervirens
- (10) 5 GAL. COMPACT MYRTLE
Myrtus communis 'Compacta'
- 5 GAL. CYPRESS
- (3) QTY.

NOTE:
 EXISTING APPROVED
 D.G. THAT IS REMOVED
 FOR NEW PAVER
 AREAS TO BE
 RELOCATED IN ALL
 PLANTING AREAS



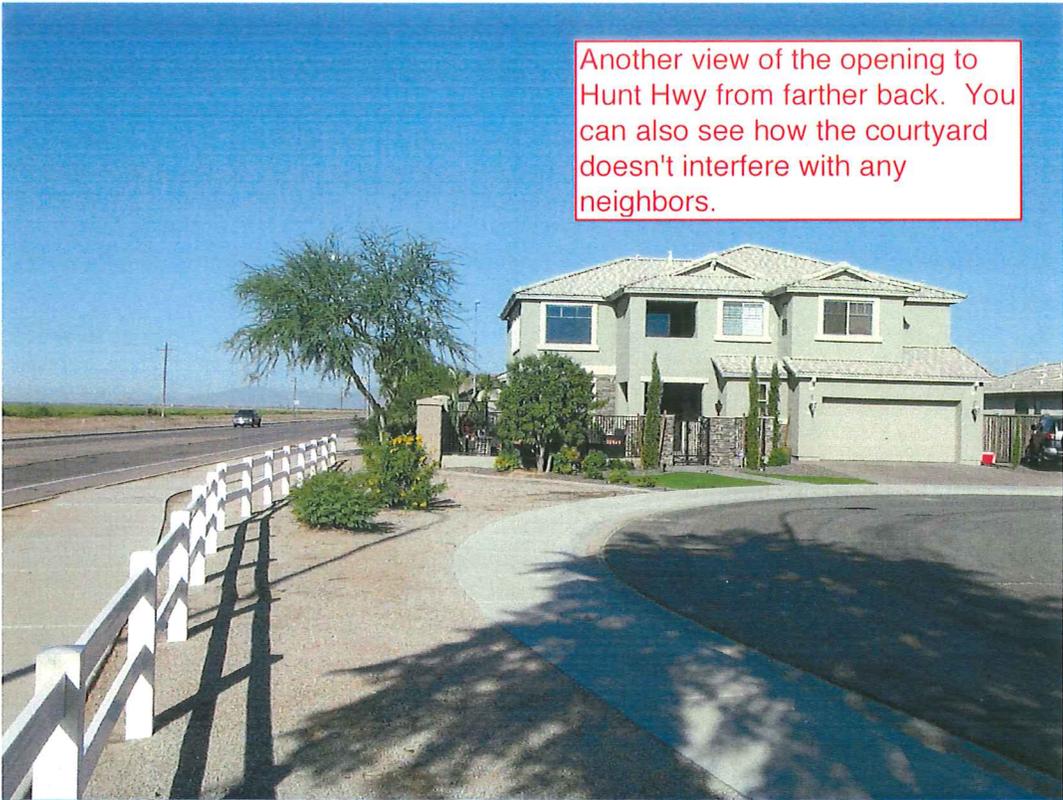
LANDSCAPE PLAN
 SCALE: 1/8"=1'-0"



Wilson Drive
Gleneagle

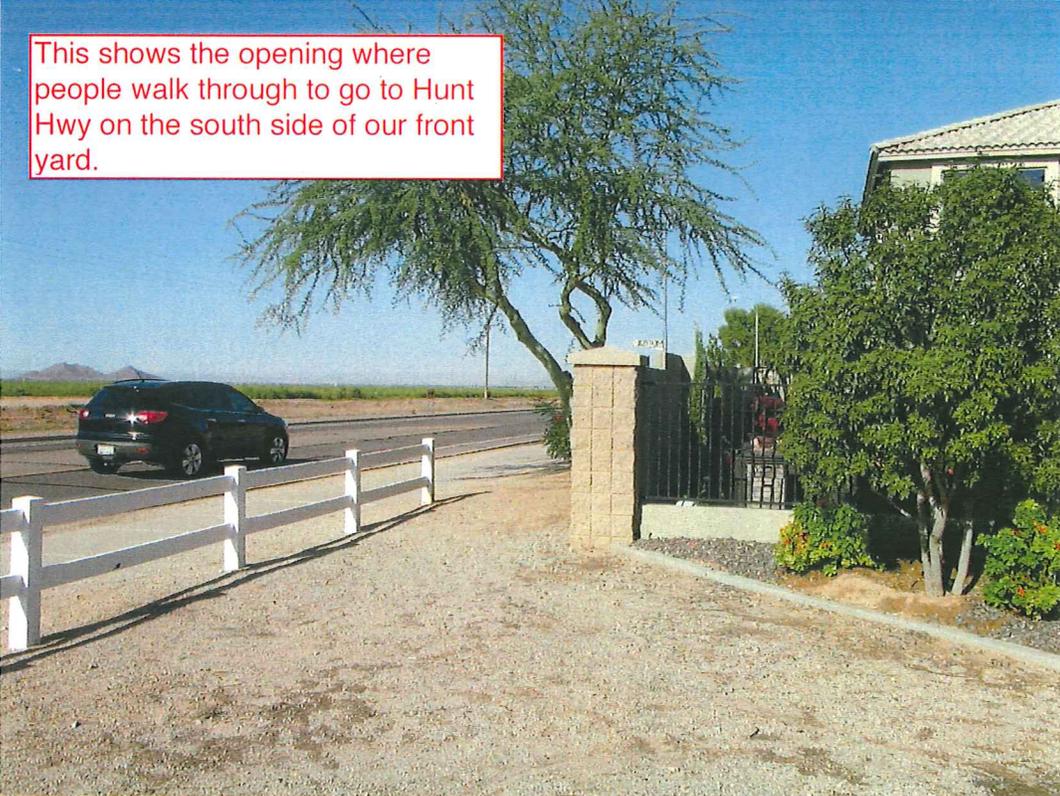
THX

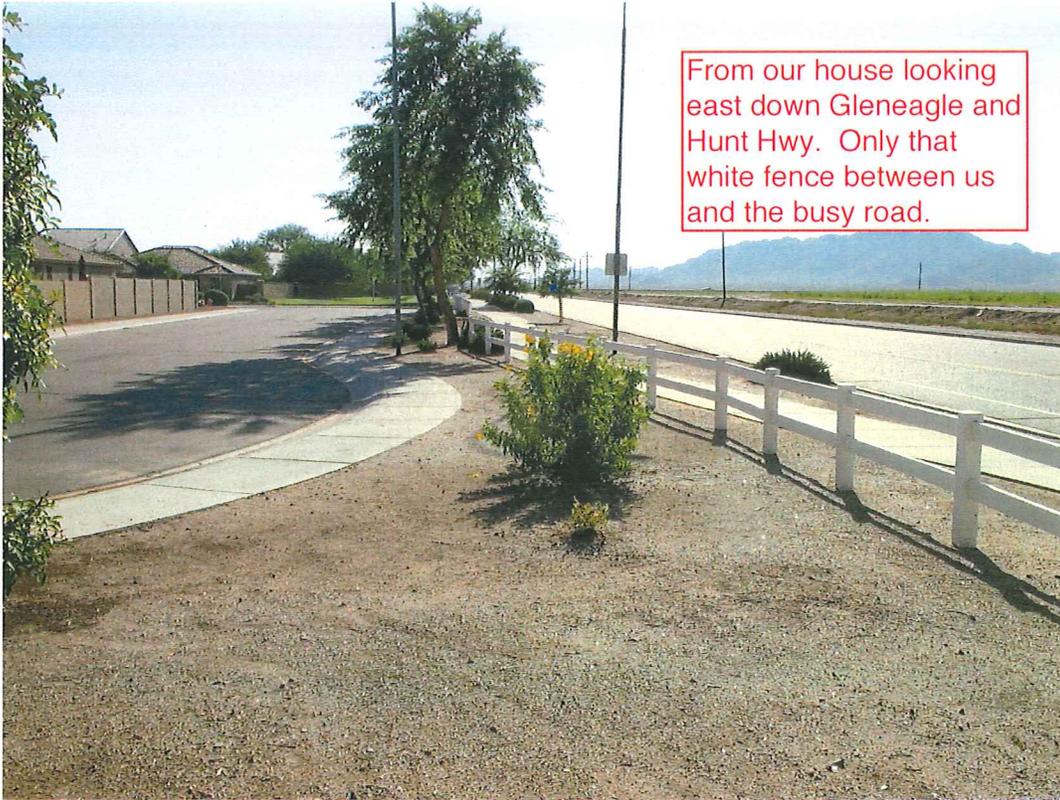
Another view of the opening to Hunt Hwy from farther back. You can also see how the courtyard doesn't interfere with any neighbors.





This shows the opening where people walk through to go to Hunt Hwy on the south side of our front yard.

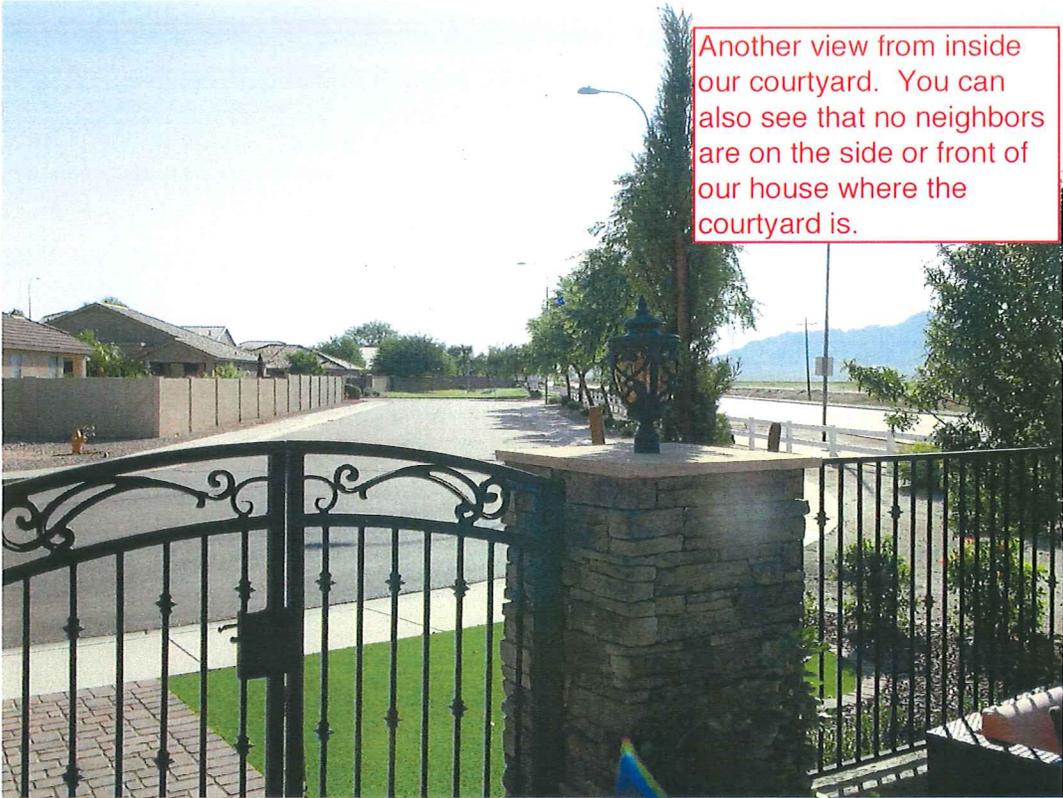




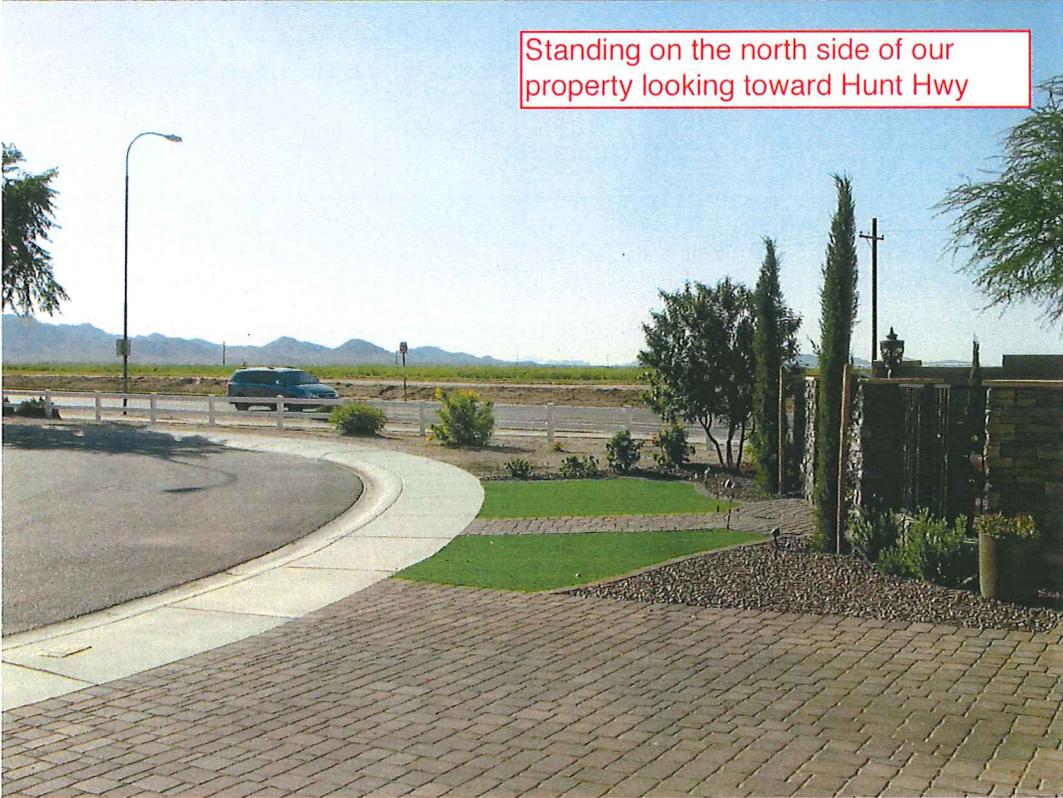
From our house looking east down Gleneagle and Hunt Hwy. Only that white fence between us and the busy road.



View of Hunt Hwy from right inside our courtyard.

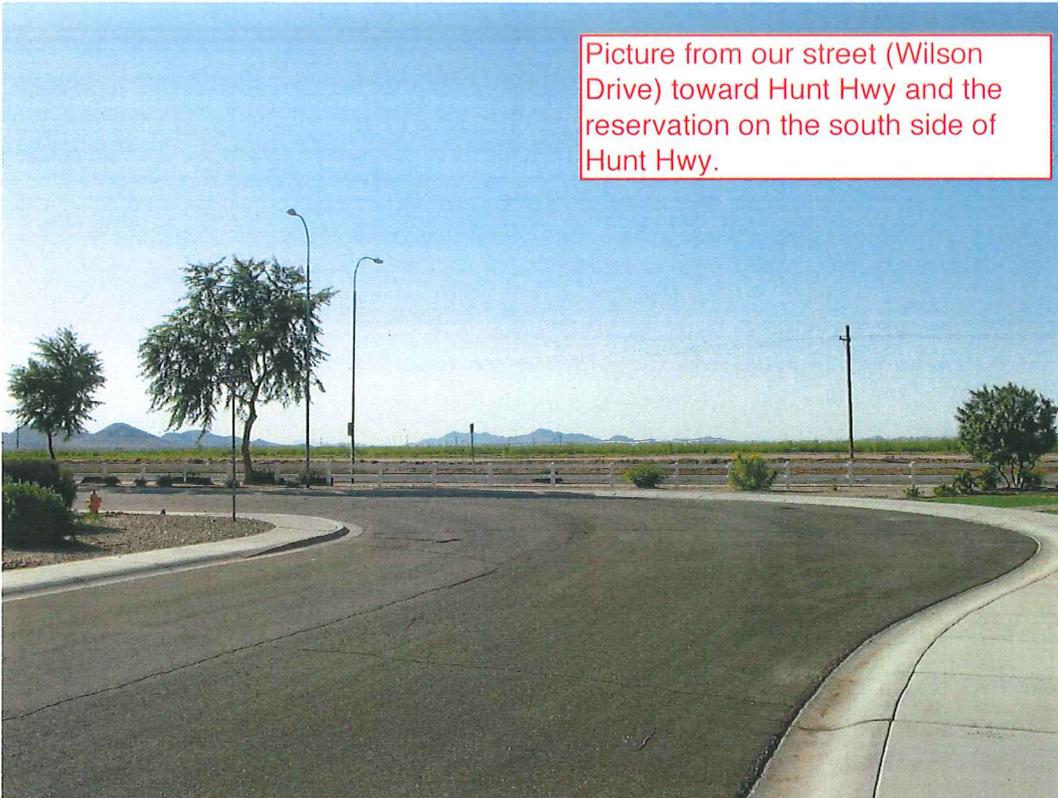


Another view from inside our courtyard. You can also see that no neighbors are on the side or front of our house where the courtyard is.

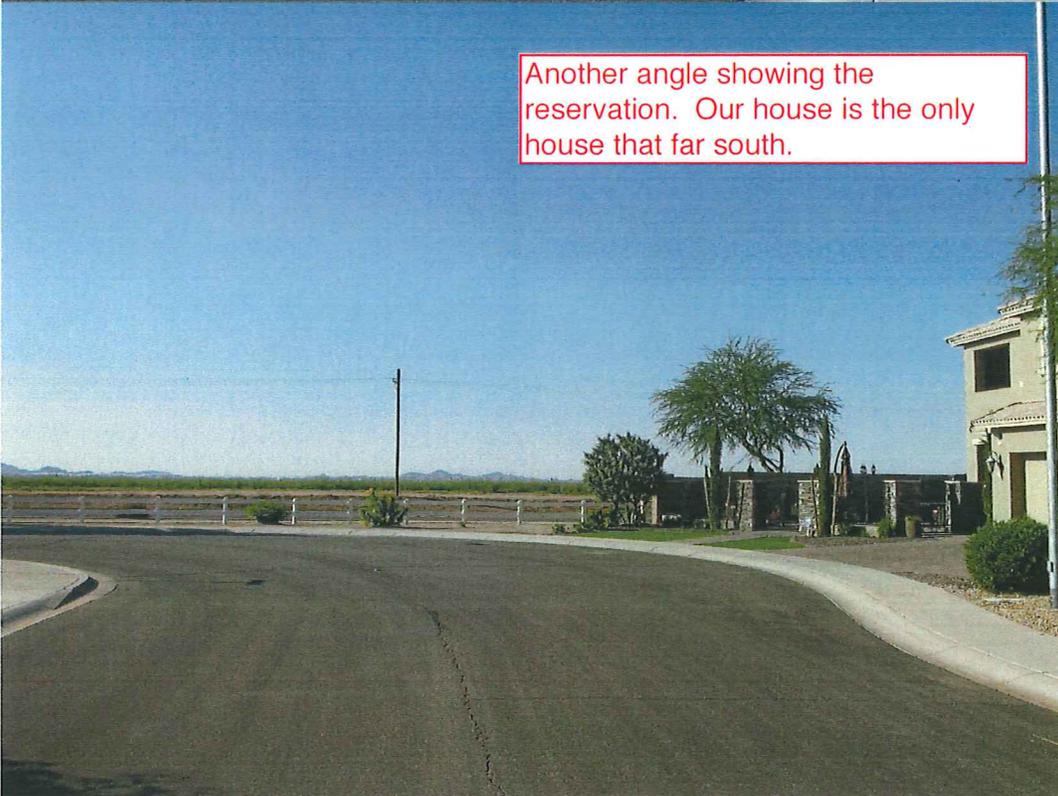


Standing on the north side of our property looking toward Hunt Hwy

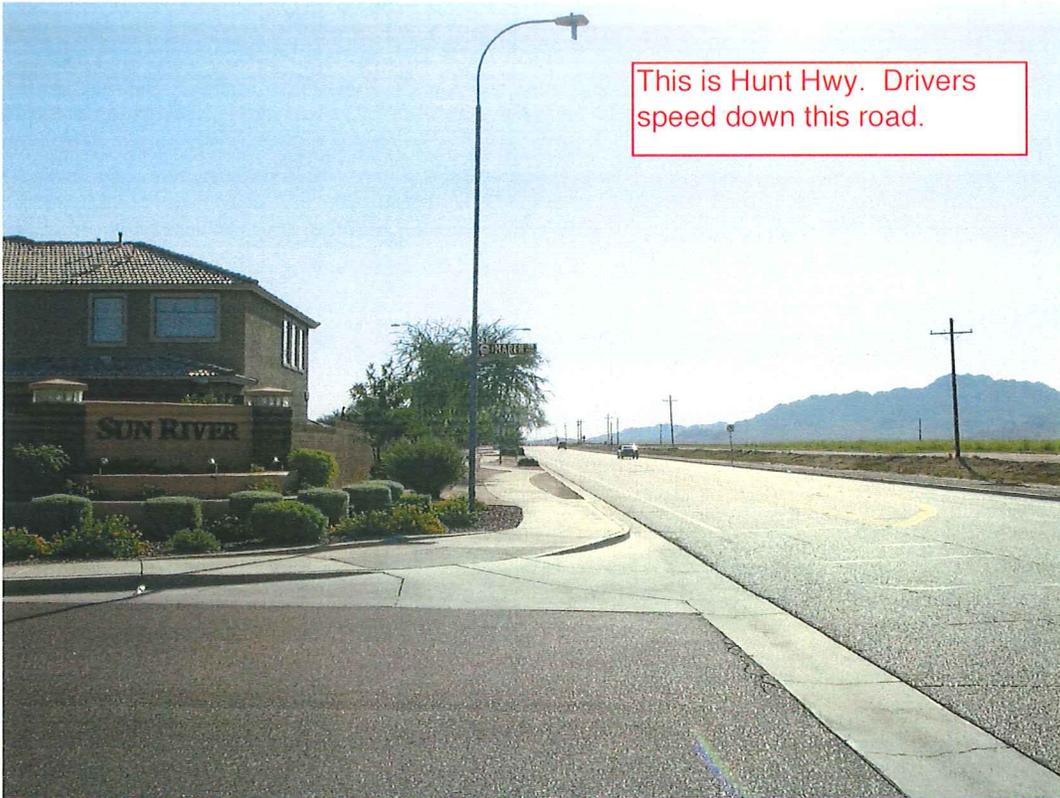
Picture from our street (Wilson Drive) toward Hunt Hwy and the reservation on the south side of Hunt Hwy.



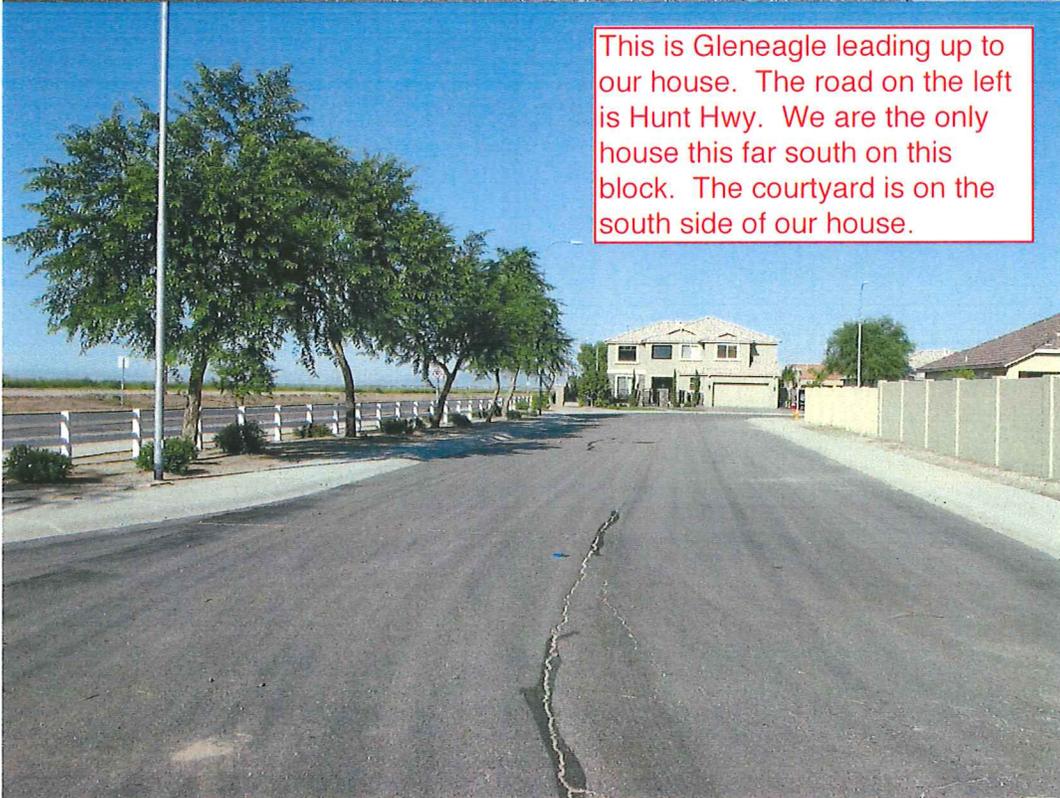
Another angle showing the reservation. Our house is the only house that far south.



our house
↓



This is Hunt Hwy. Drivers speed down this road.



This is Gleneagle leading up to our house. The road on the left is Hunt Hwy. We are the only house this far south on this block. The courtyard is on the south side of our house.



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.