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Chandler

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Where Values Make The Difference

MEMORANDUM **Planning Division – BA Memo No. 14-001**

DATE: OCTOBER 8, 2014

TO: BOARD OF ADJUSTMENT

THRU: JEFF KURTZ, PLANNING ADMINISTRATOR
KEVIN MAYO, PLANNING MANAGER

FROM: SUSAN FIALA, CITY PLANNER SF

SUBJECT: VAR14-0004 ROBLES RESIDENCE

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

Applicant: Javier Robles

Owner: Nebi Dziansah

Location: 101 West Linda Lane, south and west of the southwest corner of Arizona Avenue and Ray Road

Existing Use: Single Family Home

Zoning: Single Family Residential (SF-8.5)

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 fence located in the front yard to exceed the maximum permitted height [Zoning Code Section 35-2204]. The property is located at 101 West Linda Lane, south and west of the southwest corner of Arizona Avenue and Ray Road. The property is located in the Thunderbird Manor No. 3 subdivision, comprised of 104 lots and was developed within the jurisdiction of the City of Chandler.

The approximate 7,300 sq. ft. rectangular shaped lot is a typical sized lot for the subdivision. The lot is located at a corner. A six foot tall concrete masonry wall is along the side and rear yards.

The single-family home was constructed in 1958 and has approximately 1,323 sq. ft. of livable area. The current property owner purchased the home in December 2008. The home is used as a rental property.

The subject of this variance is a request for approval of an existing chain-link fence to exceed the maximum permitted height of three feet located in the front yard. The height of the fence is five feet which exceeds the maximum permitted height by two feet. The chain-link fence extends approximately 47.5 feet from east to west, and approximately 10 feet from the front wall plane of the home to the north.

Building permits are not required for fences seven feet or less in height. However, fences 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 March 2014.

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 7,300 sq. ft. lot is a typical sized lot for this neighborhood and is rectangular in shape. There are no special circumstances that apply to the property which do not apply equally to other properties in the neighborhood. The fence was constructed without verification of height requirements. The lot has no physical constraints that restrict the property's use as planned or zoned. The installation of the fence 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 December 2008. It is not a property right to build a fence 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 fences 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.
- Planning Staff received several telephone calls from property owners. Several residents stated their opposition and the other callers merely inquired about the request. Those opposed voiced their concerns which include: the chain-link fence is ugly, the dogs are vicious and if the dogs get loose then children are unsafe, and the dogs are noisy and fight.

SUMMARY

Planning Staff does not support this request. There are no special circumstances applicable to this property that does not apply equally to similar properties in the surrounding area. The installation of the five foot tall fence in the front yard 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 2008.

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

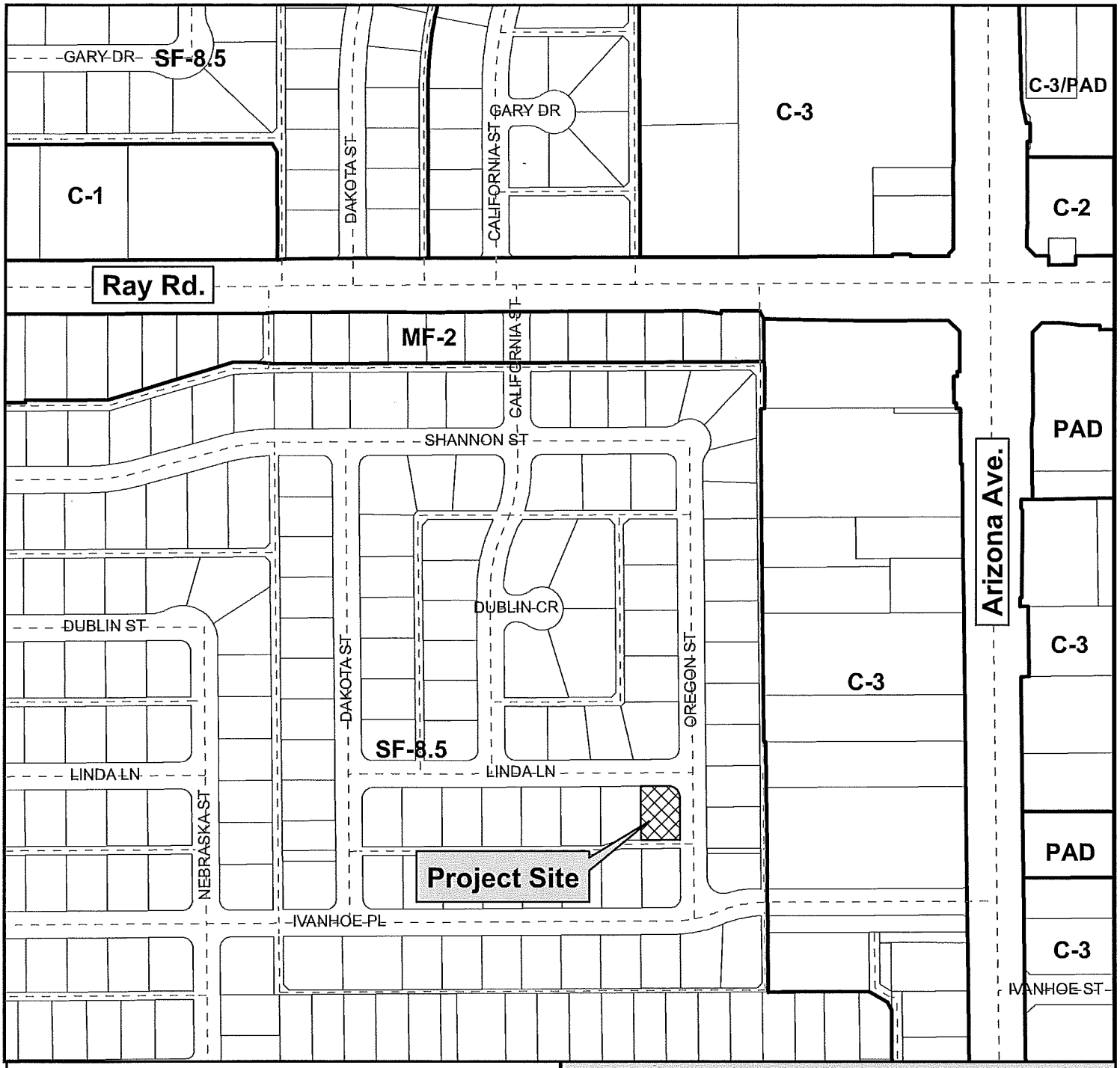
Planning Staff recommends denial of this request.

PROPOSED MOTION

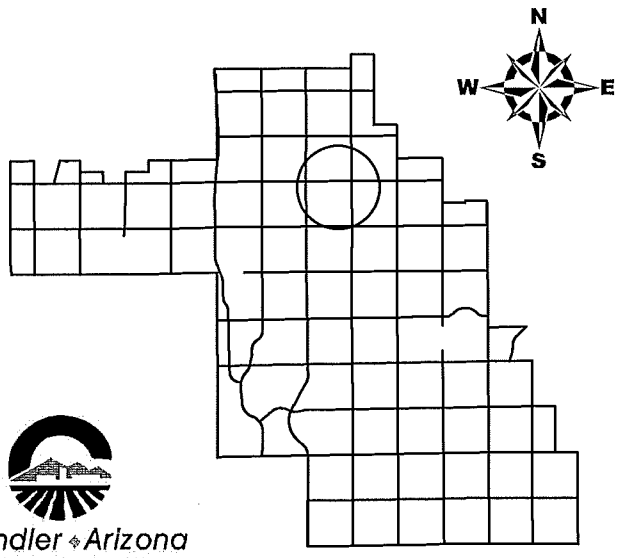
Move to deny the variance request VAR14-0004 ROBLES RESIDENCE, as recommended by Planning Staff.

Attachments

1. Vicinity Maps
2. Aerial
3. Applicant's Justification
4. Photos taken by Planning Staff
5. Notice to Comply
6. BOA Powers and Duties



Vicinity Map



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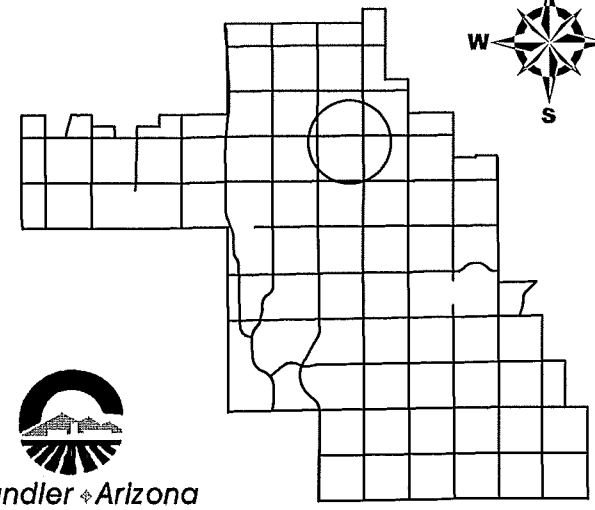
VAR14-0004

Robles Residence
101 W. Linda Ln.

CITY OF CHANDLER 5/28/2014

Vicinity Map



VAR14-0004

Robles Residence
101 W. Linda Ln.

Chandler ◆ Arizona
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CITY OF CHANDLER 5/28/2014

AERIALS

W Linda Ln
302-56-079
66
302-56-076
63
302-56-077
64
302-56-077
302-56-078
65
N Oregon St
74'
80'
16'
25'
25'
64'
SB9°44'16"E
100'

47.5 ft., east - west
10 ft., north from front wall of home
Not drawn to scale.
CHANDLER
N Oregon St
20ft

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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 special circumstances to this enclosure on the property of 101 W. Linda lane, is due to the reoccuring issue of the dog that belongs to the home owners residing at 833 N. Oregon St. Keeps getting out and fighting with our dogs. In the past 1 1/2 years their dog has gotten out at least 12 times. It wasn't until it got out in Mid december 2013 our son who is diagnosed with High-functioning Autistic disorder was nearly attacked by this same dog. Since this event our son is terrified to come outside to the front yard. Since we build this enclosure in feburary we've managed to help regain some reassurance that he is safe from this dog attacking him.

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

By granting this variance it is necessary for our autistic son to be able to enjoy the front yard without being in fear of this dog. Even though it has taken us 3 months to be able to help him understand that he is safe with us and that we as parents will do what we can to keep him safe from this dog. Ever since the enclosure has been built we've managed to slowly introduce him to the front yard and help him understand that the fence will keep the dog from ever reaching him because of the height. It is still a daily battle with him. He is still afraid.

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.

I have a special needs child who is diagnosed high functioning autistic disorder. My child has two therapy dogs who accompany him while he is outside. They offer him security or as a security blanket to reassure him that he is safe. Without the fence the neighbor dog will very well hop the fence and attack my son.

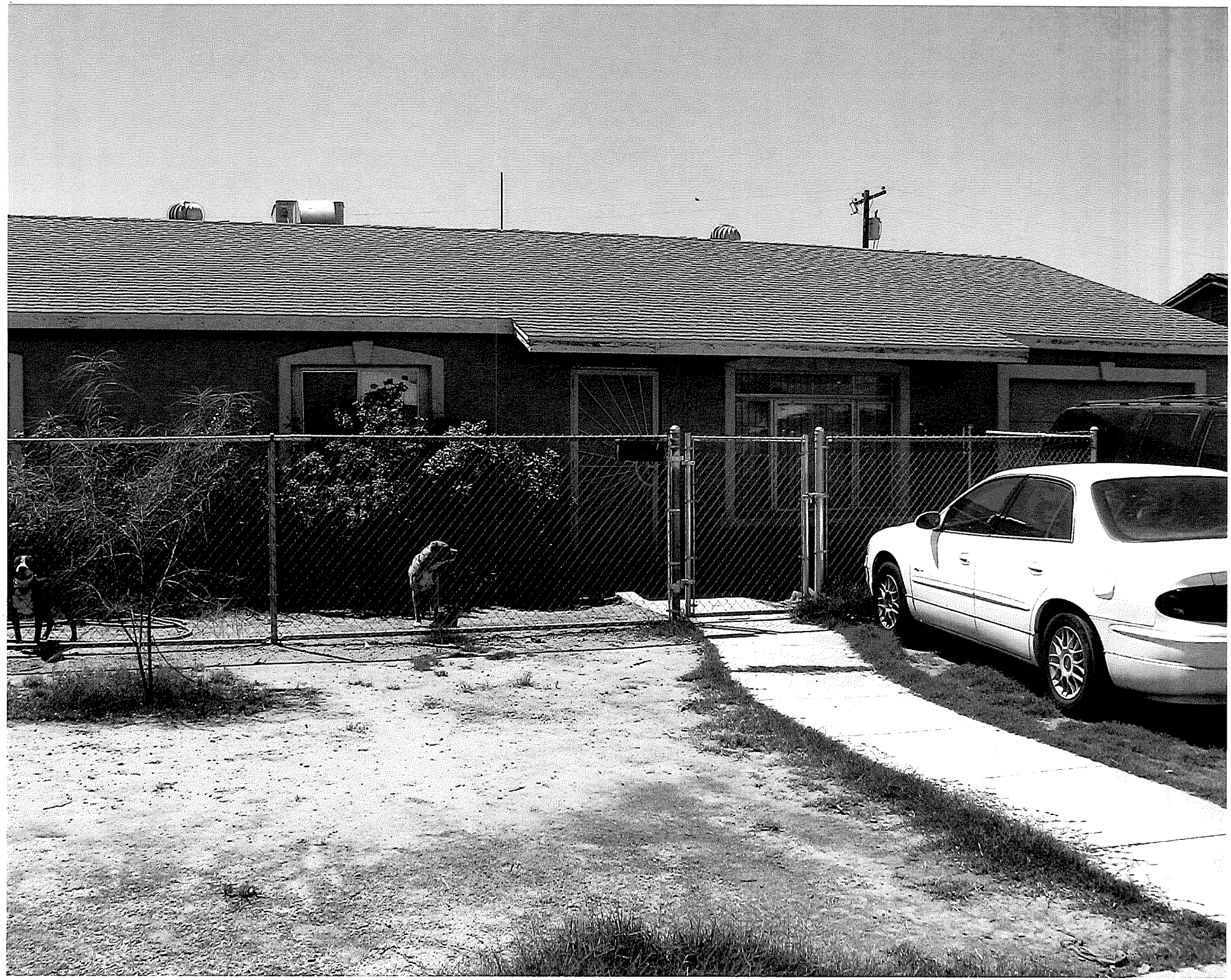
To whom it may concern

My family and I reside at 101 W. Linda Lane Chandler, Az. 85225. We have lived here since September 2012. Ever since we've lived here we have had to deal with the issue of our neighbor's dog who lives at 833 N. Oregon st. The dog has a history of getting out of its property and coming onto our yard, trying to fight with our pets. I've contacted animal control a number of times about this issue but since the dog is always back on its property by the time someone makes it out. They tell me that there is nothing they could do. As time goes on this dog by the name of "Billy" periodically manages to hop his fence or break pass his owner and always comes straight for my front yard. I go outside and I inform the owner that Chandler has a leash law and that she needs to put one on her dog. It usually takes the owner on average 5 minutes for her to get her dog, because she usually gets another person to retrieve the dog. If as though she the owner is afraid of the dog. This is such an issue of child endangerment because I can't allow my children to play in the front yard because of this dog. One particular incident involves my second oldest son Tristan, who has been diagnosed as having high-functioning autistic disorder. One early evening the entire family was in the front yard decorating our home for christmas, when the dog "Billy" managed to break through the owners screen door and charge at my son Tristan. If it wasn't for my pets distracting the dog, "Billy". He would of surely attacked my son. Since that day my son hasn't been able to come out in the front yard to play or to just sit down and enjoy the weather. He is so afraid that this dog will eventually get him. He won't go outside even with an adult. This happened in December 2013. Since then we had to stand next to him and reassure him that the dog won't get him, while he waits for his bus in the morning, and when he gets dropped off in the afternoon. Nothing we did, gave him the confidence to come outside in the

front yard. It wasn't until we put up an enclosure in front of our front door. The fence is 5ft in height and connects to our side gate. Once this enclosure has gone up, my son has slowly made progress on attempting to come outside to the front yard. Everyday is a battle because we can hear the dog across the street barking, scratching at the gate or their front door trying to get out and reach my son. Every time the dog "Billy" would get out, I would tell the owner that she needs to get her dog on a leash. On March 6th my mother caught the same neighbor taking pictures of my back yard while he was clinging to our side gate. When the male saw my mother, he ran across the street back to his property. I contacted chandler police and filed a police report. A week later I caught the same neighbor on a security camera dumping food into my back yard to my pets and again I filed a police report with Chandler pd. I've spoken to 3 individuals from planner of the day and with the code enforcement department. I honestly am out of options. I fear for the safety of my autistic son and my other 2 children because if I eventually have to bring the height of the enclosure down, I just know that this dog with attack my kids. Its just an accident waiting to happen, and its also restricting my autistic son the full use of his front yard. No child should be restricted to one area of a property due to irresponsible pet owners letting their dog run ramped.

307

PUBLIC
HEARING
BOARD OF ADJUSTMENT



BCR4753

N OREGON ST
833
STOP

City of Chandler, Maricopa County, State of Arizona

NOTICE TO COMPLY

Neighborhood Resources Code Enforcement
Office Location:
235 South Arizona Avenue
Chandler, Arizona 85225
Office Main Line (480) 782-4320 Fax (480) 782-4350

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Office Hours: 8:00am to 5:00pm
Mailing Address:
Mail Stop 600 PO Box 4008
Chandler, Arizona 85244-4008
www.chandlercode.com

Occurred	Date observed (Mo/Day/Yr)	Time of day	☐ AM ☐ PM	☐ OV ☐ C	Case Number:
	3-10-14	11:15			1402-0425

Location	Address	City	State	Zip Code
	101 W. Linda Ln	Chandler	Arizona	
	Parcel number: Lot#: Subdivision: Sec. Township. Range:			

Responsible Party	Name ☐ Unknown	Type ☐ Owner ☐ Renter ☐ Manager ☐ Employee	Phone
	Kevin		336-0552
	Address	City	State	Zip Code

The City of Chandler needs the help of each citizen to maintain it as the community in which we are all proud to live. We request your cooperation by keeping your property, alley, or adjoining right-of-way clean and safe. To help us in this effort, please note the following item(s) that need your attention.

Violation and corrective action needed

Chapter	Section	CORRECTIVE ACTION PLAN OPTION ☐ YES ☐ NO	Description of violation
35	701		Fence Height 5 feet tall on
Specific Location ☐ Front Yard ☐ Side Yard ☐ Rear Yard ☐ Alley ☐ Other:			Front yard
How to resolve Reduce Fence			Uses permitted
dog Kennel			

Chapter	Section	CORRECTIVE ACTION PLAN OPTION ☐ YES ☐ NO	Description of violation
			Planner of the day
Specific Location ☐ Front Yard ☐ Side Yard ☐ Rear Yard ☐ Alley ☐ Other:			782-3050
How to resolve			Requirements ?

Chapter	Section	CORRECTIVE ACTION PLAN OPTION ☐ YES ☐ NO	Description of violation
Specific Location ☐ Front Yard ☐ Side Yard ☐ Rear Yard ☐ Alley ☐ Other:			Malcolm Hanking
How to resolve			782-4319 Manager

Correct all violation(s) on or before 3 / 17 / 14.

If the City abates the violation, the estimated cost is $_____. Not Applicable ☐

Code Enforcement Inspector:	Mark Roberts	Telephone Number:	480 782-4338

Applicable in instances of non-compliance

Civil and Criminal Penalties: Persistent or uncorrected violations may result in civil sanction not to exceed five hundred dollars ($500.00) for each violation, and each date of violation. Criminal penalties may result in fines of up to twenty-five hundred dollars ($2,500.00) for each day a violation is found, six (6) months in jail, probation for a term not exceeding three (3) years, or any combination thereof. Repeat violators within any thirty six (36) month period shall be guilty of a criminal misdemeanor. In addition to civil and criminal penalties, if the violation remains uncorrected after 30 days, the City is authorized to abate the violations, and assess a lien against the property for the cost of the abatement.

BOARD OF ADJUSTMENT

CHAPTER 35

35-2501. 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.