



Chandler • Arizona
Where Values Make The Difference

B.

APR 13 2011

Chandler



2010

MEMORANDUM Transportation & Development – BA Memo No. 11-008

DATE: APRIL 4, 2011

TO: BOARD OF ADJUSTMENT

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

FROM: BILL DERMODY, SENIOR CITY PLANNER *BD*

SUBJECT: VAR11-0004 ALLSHOUSE RESIDENCE APPEAL

Request: Appeal of the Zoning Administrator’s decision that a certain motor home shade cover constitutes a “structure”

Appellants: David and Candace Allshouse, represented by Bueler Jones, LLP

Location: 315 W. Marlboro Drive, south and west of Elliot Road and Arizona Avenue

Existing Use: Single-Family Home

Zoning: Single-Family Residential (SF-8.5)

RECOMMENDATION

Staff recommends affirmation of the Zoning Administrator’s decision.

BACKGROUND

The request is an appeal of the Zoning Administrator’s decision that a certain motor home shade cover constitutes a “structure”. The shade cover, also referred to as an “awning” in the application, protects a motor home generally parked in the rear yard at 315 W. Marlboro Drive, the southeast corner of Marlboro Drive and Nebraska Street. The lot contains a single-family residence and is within the Dave Brown Unit Two residential subdivision.

The shade cover is approximately 12’ wide, 35’ deep, and 12’ high. It has a steel pipe frame covered in semi-translucent canvas that is attached by zip ties, with the whole entity resting on six wheels and not connected to the ground. The west-facing side of the shade cover is open so

as to allow the motor home to move in and out. The shade cover is usually located on a concrete pad used for parking the motor home and reportedly moved near the pool on occasion to provide shade for visiting grandchildren. The appeal documents also state that the shade cover can be disassembled. Photographs of the shade cover provided by the appellants are among the memo attachments.

The Board of Adjustment denied a variance request for a setback deviation on the same property in April 2010. A metal shade cover had been on the property, but was removed prior to the Board hearing. The new shade cover that is the subject of the current application was placed on the property in May 2010.

If the Board of Adjustment reverses the Zoning Administrator's decision, there are also Building Code issues that would need to be addressed separately. Building permits would be required that address wind load and other potential safety concerns through the regular review process. Any appeals of Building Code determinations, should they be requested, would go to a different board: the Board of Appeals.

The Zoning Administrator has determined that the Zoning Code does not apply to most vehicles, such as cars, trucks, boats, and motor homes.

ZONING CODE

The definition of a "structure" is set forth by the Zoning Code:

35-200. Definitions.

Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed or parts joined together in some definite manner.

ANALYSIS

Staff finds the shade cover to be a "structure" as defined in the Zoning Code. The shade cover in question is obviously a "piece of work built up or composed or parts joined together in some definite manner," per the Zoning Code definition. That is, it has a frame that has been built up and covered with a canvas material in order to form a definite piece of work: a shade cover. The inclusion of wheels in the design and its portability do not change these facts. Neither does the fact it has multiple purposes (i.e. swimming pool shade and motor home shade). It has the same visual impact as a shade cover or other structure that is affixed to the ground without wheels, and so it should be subject to the same Zoning Code regulations.

The Zoning Administrator has determined that vehicles such as cars, trucks, boats, and motor homes are generally not structures and therefore are not subject to Zoning Code regulations such as minimum setbacks. The shade cover differs from these vehicles in two important ways. First, the shade structure serves its only purpose (shade provision) when located on the property, while the vehicles serve their purposes (transport or recreation) when off the property. Second, the

vehicles typically leave the property regularly or at least on occasion, while the shade structure typically does not.

Staff notes that the primary reasons for the establishment of minimum side and rear yard setbacks are public safety and aesthetics—the promotion of a more visually “open” atmosphere. The placement of the shade cover on wheels does not affect public safety or aesthetic considerations at all. Whether on wheels or not, the shade cover in question is located close to the fence and projects several feet over it—no differences from a fixed shade cover are evident above the lowest few inches.

Staff is concerned that reversal of the Zoning Administrator’s decision will present negative unintended precedent with regard to other structures in Chandler. For example, exempting the shade cover from the “structure” definition might encourage those who desire garages or storage sheds in violation of the minimum setbacks to simply place these structures on wheels. Also, if the shade cover’s status as “personal property” is the reason for reversal, other residents might justifiably claim that storage sheds are personal property also exempt from the Zoning Code simply because they can potentially be picked up and moved with the resident.

APPEAL PROCESS

The Zoning Code allows appeals of any decision of the Zoning Administrator to be taken to the Board of Adjustment by an aggrieved person. The Board of Adjustment can reverse or affirm the decision in whole or in part, or modify the decision. Unlike for variances, the Zoning Code does not specify the criteria to be used by the Board in evaluating appeals. Like variances, any reversal of the Zoning Administrator’s decision requires the concurring vote of at least four (4) members of the Board.

PUBLIC/NEIGHBORHOOD NOTIFICATION

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

Three neighbors have contacted Staff in opposition to the appeal citing negative aesthetics, precedent for other properties, skepticism that the structure will ever move once it is approved, and disagreement with the concept that wheels change its nature.

Four neighbors have contacted Staff in support of the appeal, one of whom wrote a letter among the memo attachments. Reasons cited for support include that the shade cover is clean and properly built, that it looks good, and that it is movable (and so not a “structure”).

RECOMMENDED ACTION

Staff recommends affirmation of the Zoning Administrator’s decision.

PROPOSED MOTION

Move to affirm the Zoning Administrator’s decision regarding a “structure” in case VAR11-0004 ALLSHOUSE RESIDENCE APPEAL, as recommended by Staff.

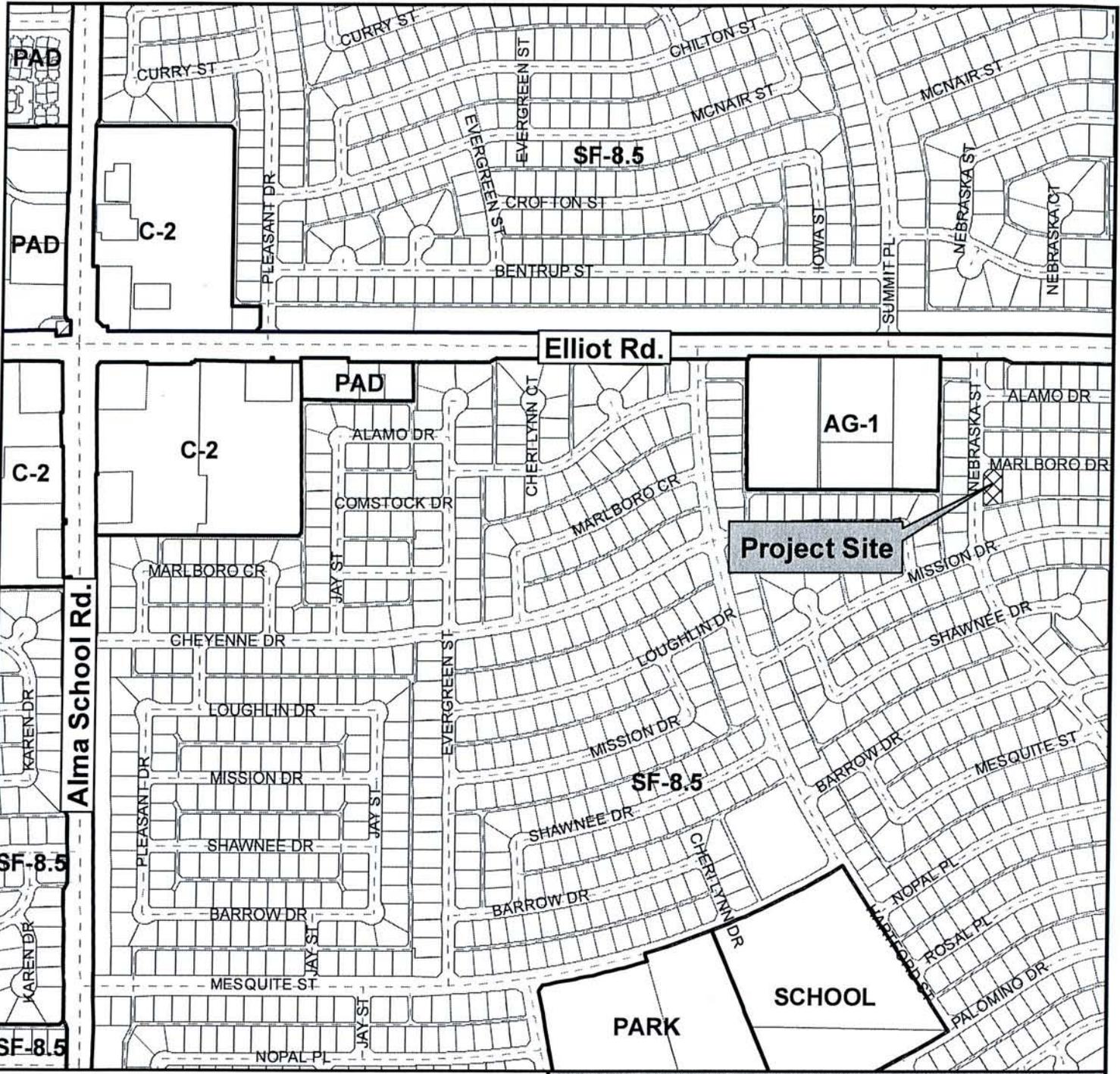
BA MEMO 11-008

April 4, 2011

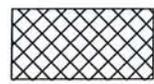
Page 4 of 4

Attachments

1. Vicinity Maps
2. Aerial Close-up
3. Appellant Photos
4. Appeal Application and Supporting Documents
5. Letter of Support
6. Powers and Duties/Appeal Procedure



Vicinity Map



VAR11-0004

**Allshouse Residence
315 W. Marlboro Dr.**



Vicinity Map



VAR11-0004

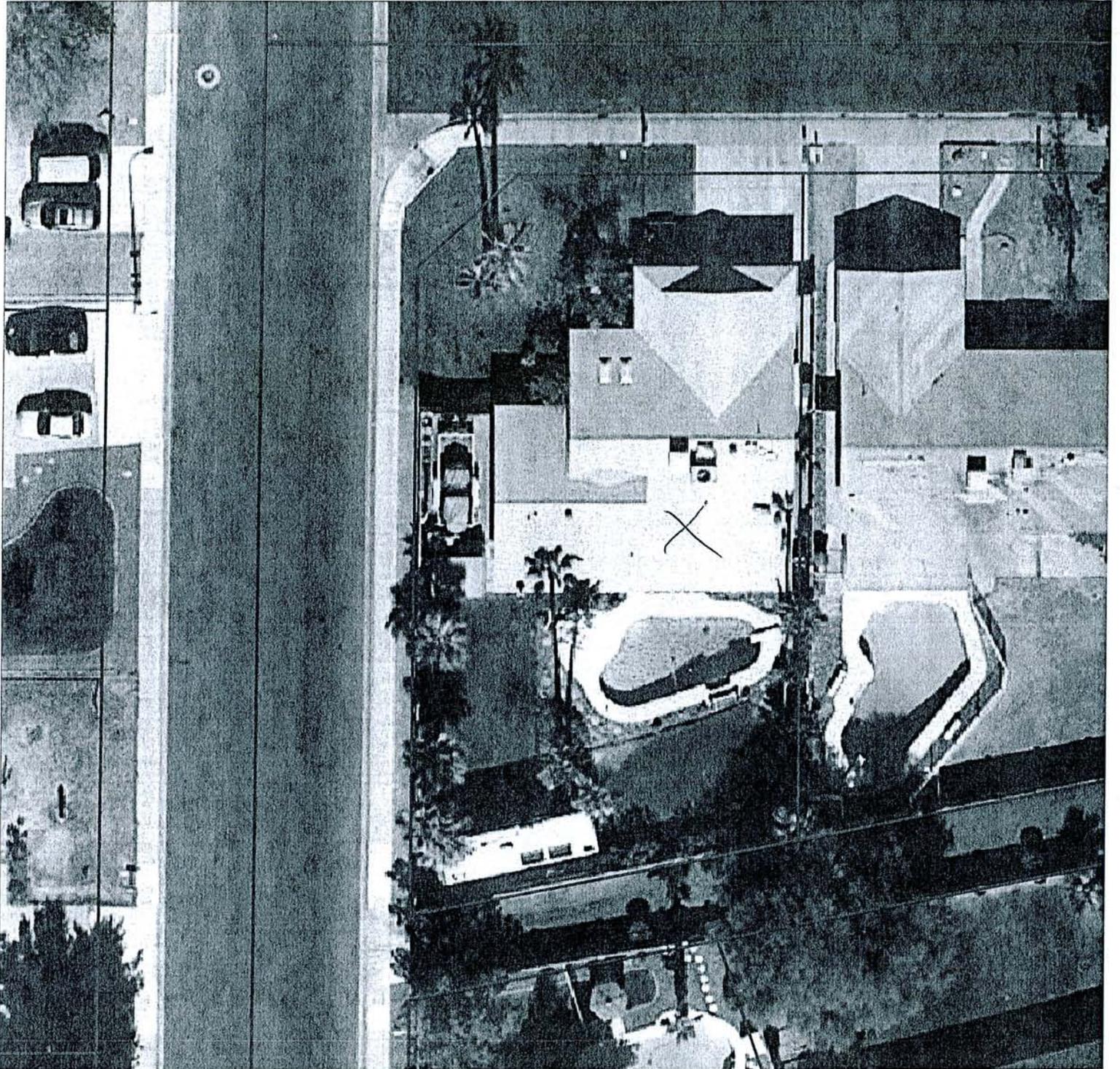
**Allshouse Residence
315 W. Marlboro Dr.**



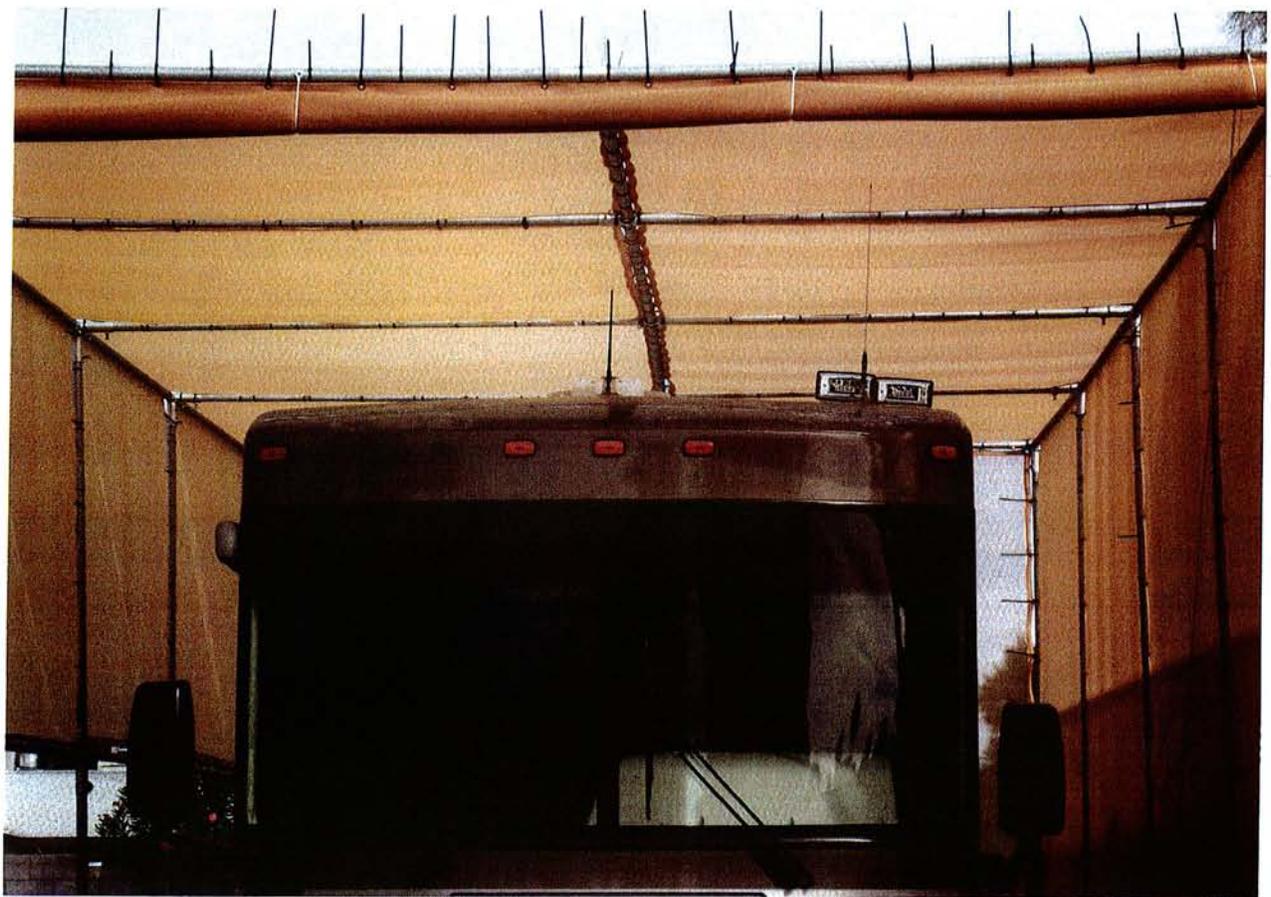
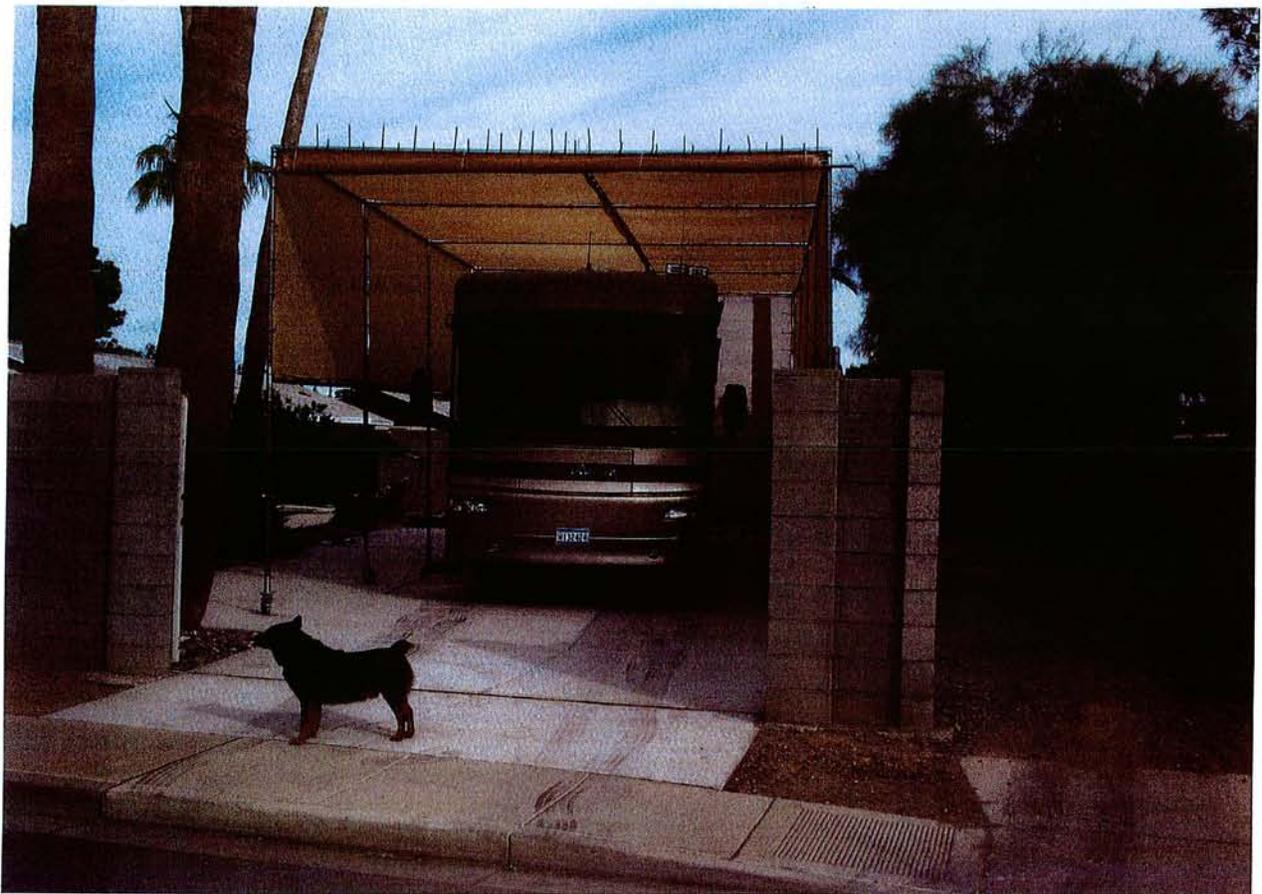
Chandler • Arizona
Where Values Make The Difference

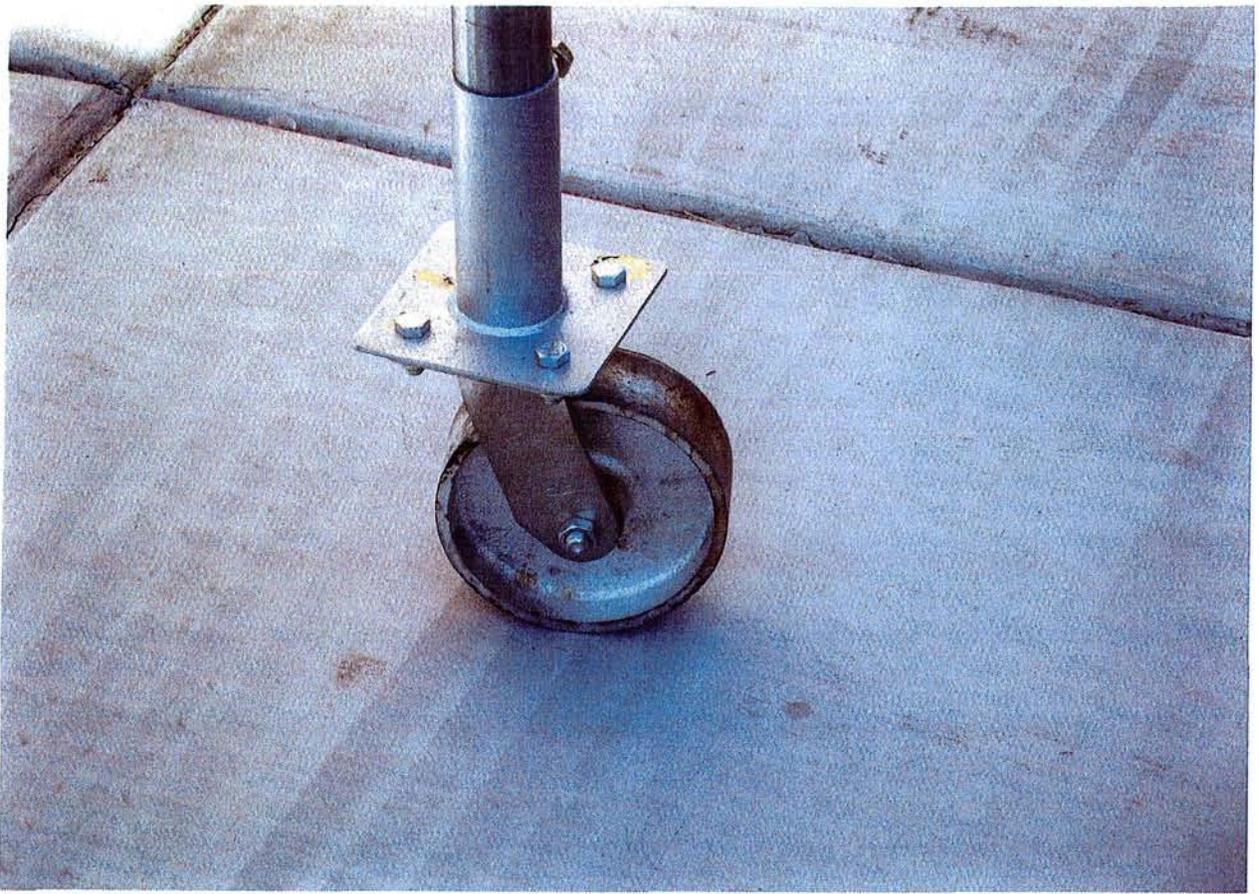
CITY OF CHANDLER 2/15/2011

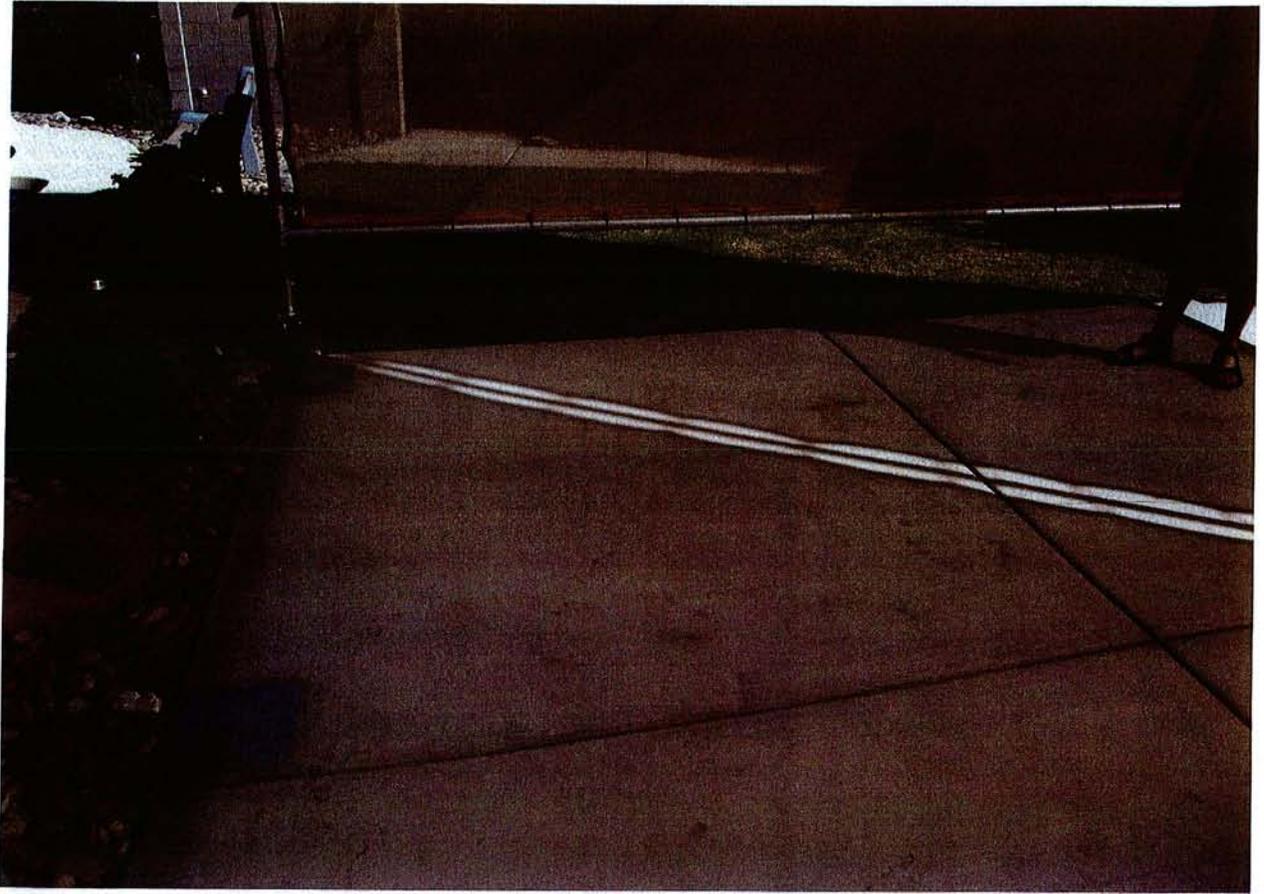
County Parcels

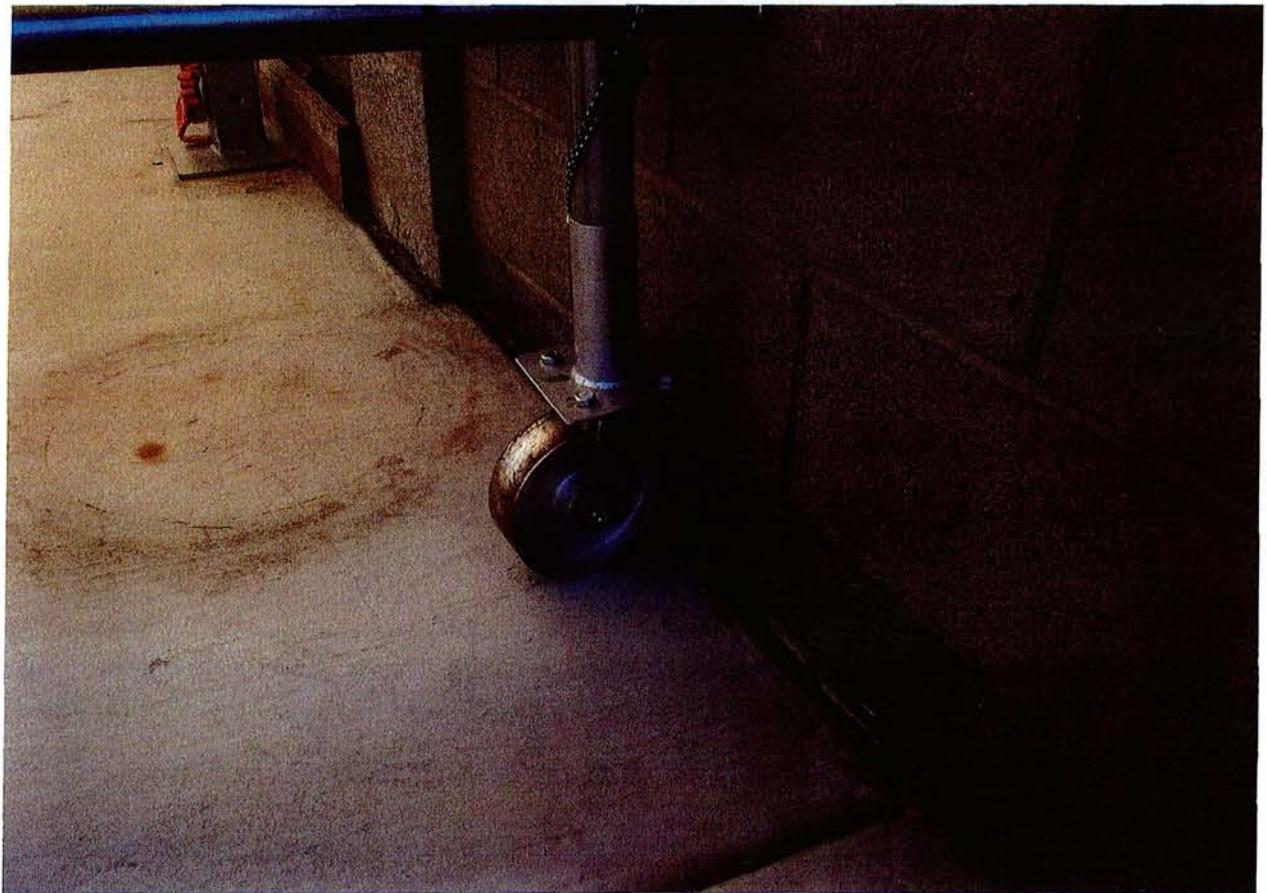
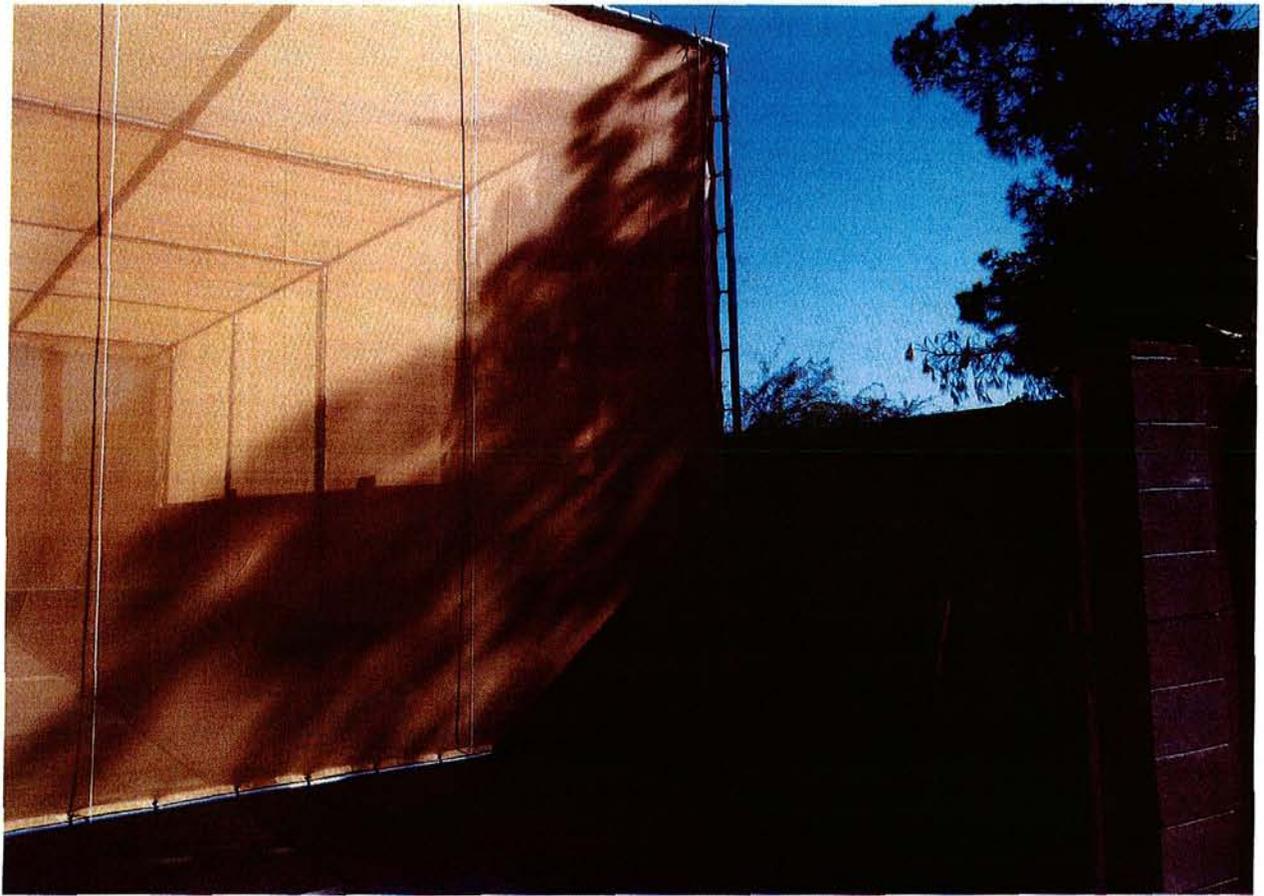


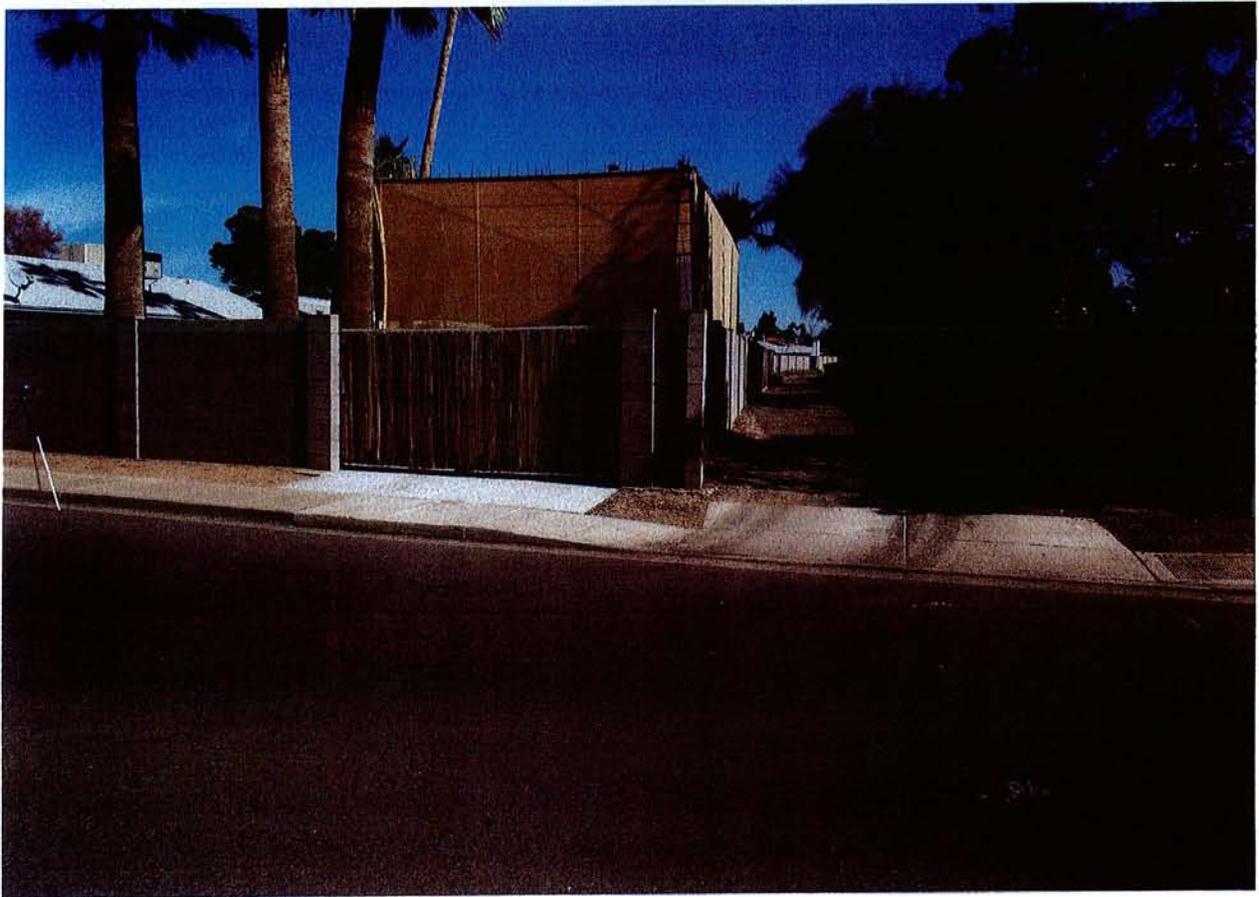
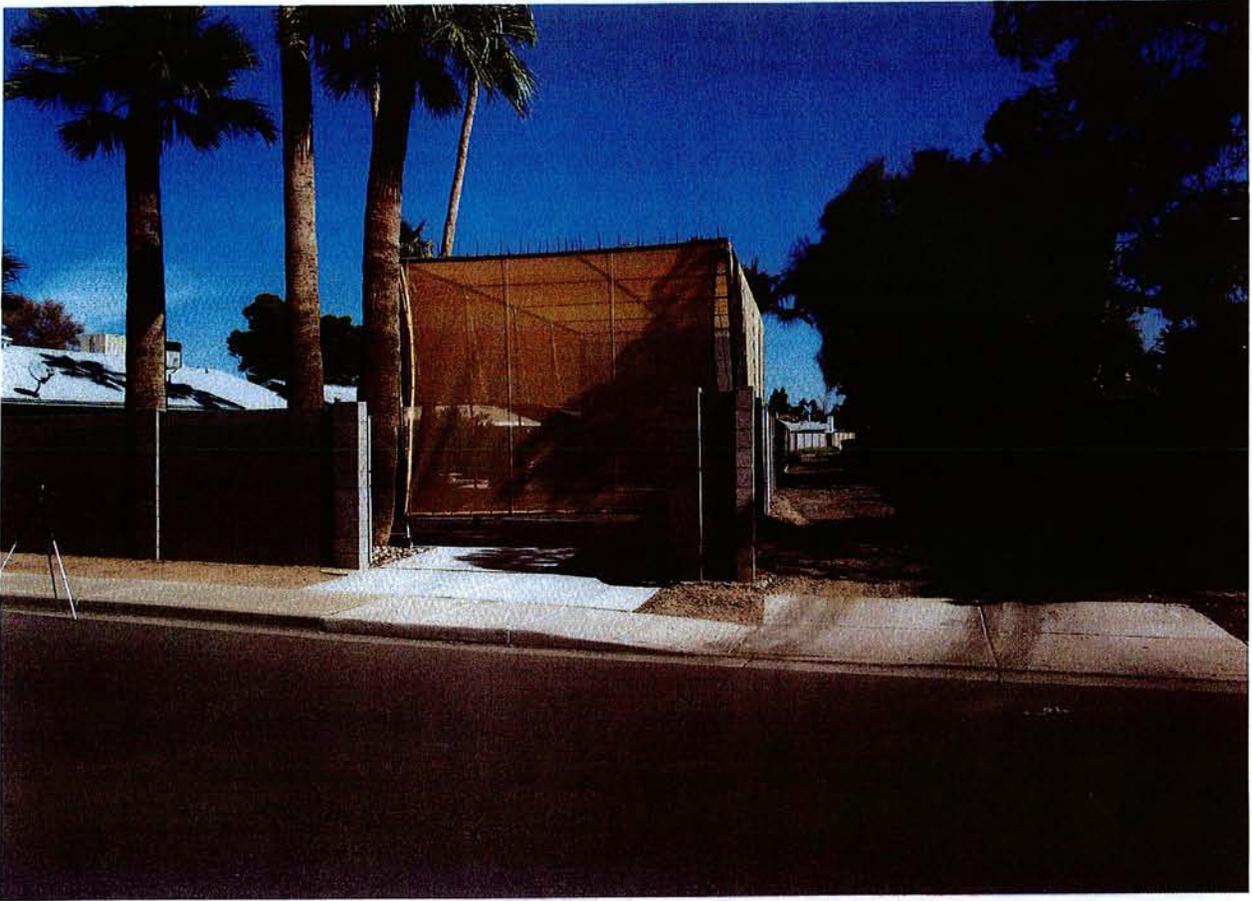














Chandler • Arizona
When Values Make The Difference

VAR 11-0004
**Appeal to the
Board of Adjustment
Application**

Please complete and attach Form No. 133, Board of Adjustment Appeal Supplementary Questionnaire.

Location of the property that is the subject of the appeal (if applicable) 315 W. Marlboro Dr., Chandler, AZ 85225		
Summation and explanation of the appeal: Mr. & Mrs. Allshouse store a motor home in their backyard. Mr. Allshouse constructed a cover that is on wheels that shades the motor home. We disagree with Mr. Kurtz's determination that it is a structure per the Chandler Zoning Code.		
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.		
Name of person appealing David and Candance Allshouse		
Mailing Address 315 W. Marlboro Drive	Phone Number	
City, State, Zip Code Chandler, AZ 85225	Fax Number	
Physical location/address (if different than mailing address):		
Name of representative of person appealing (if applicable) Karl T. Scholes, Esq., Bueler Jones, LLP		
Mailing Address 1300 N. McClintock Drive, B4	Phone Number 480/775-6400	
City, State, Zip Code Chandler, AZ 85226	Fax Number 480/775-8868	
<i>As provided in the City of Chandler Zoning Ordinance, I appeal the action of the Zoning Administrator. In making this appeal, I understand that the mere filing of this appeal and payment of fees does not entitle me to the relief requested.</i>		
Signature of person/person's representative appealing 	Date 2/8/2011	Fee \$200.00
For City Use		
Date Filed	Development No.	Case Planner

Mailing Address:
P.O. Box 4008, MS 105
Chandler, Arizona 85244-4008

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.: UDM-134
New 6-7-07

PLANNING & DEVELOPMENT DEPARTMENT
Board of Adjustment
Appeal of Administrative
Decision/Interpretation
Supplemental Questionnaire

Section 35-2503 of the Chandler City Code provides that an appeal to the Board of Adjustment may be taken by any person aggrieved or by officials, departments, boards or divisions of the City affected by any decision of the Zoning Administrator by filing a notice of appeal with the Zoning Administrator and the Board of Adjustment within 30 days of the date of such decision. As used in Section 35-2503 and Arizona Revised Statutes Section 9-462.06(D), "aggrieved person" means a person who has suffered an economic or other injury that is peculiar to that person or at least is more substantial than that suffered by the community at large.

1. Identify the decision or interpretation you wish to appeal and the date it was issued.

On January 19, 2011, Bueler Jones, LLP – on behalf of David and Candace Allshouse – wrote a letter requesting that Zoning Administrator, Jeff Kurtz, issue a written determination that the Allshouses' awning is personal property, and does not violate the set-back ordinance of Chandler City Code. On January 27, 2011, Mr. Kurtz issued a decision (see attached hereto as Exhibit 1.) that the awning is a structure and a building, and that it violates the set-back requirement under the City of Chandler zoning code

2. Explain how you are aggrieved by the decision of the Zoning Administrator you wish to appeal.

The awning in question shields the Allshouses' motor home from direct exposure to the sun. They have made a substantial investment in their motor home, and if they are forced to remove the awning, their motor home will be damaged beyond repair by the Arizona sun. In addition, the Allshouses have already spent a significant amount of money by removing a prior structure previously cited by the City of Chandler.

3. Identify the Ordinance sections under which you feel that your interpretation would be justified.

The awning in question should not fall under the "structure" definition. The awning is portable, and is not permanent. The Allshouses also use it for different purposes through-out the year (they use it as shade to cover their backyard pool when their grandchildren are swimming). Also, the definition of structure, as per the City of Chandler Code, is overly broad and vague. Under the Code's definition of "structure," an extraordinary list of things – that are not structures – would be considered a structure. There should also be a differentiation made on real property and what is subject to set back requirements, etc.

4. Provide any additional comments regarding your request that you would like to submit (additional pages may be attached).

The Allshouses have expended a lot of time and money trying to comply with the City's requests. They had taken down a previous structure, which they had spent over \$5,000.00 on. Their only motive is to preserve their investment and enjoy their property. The Allshouses firmly believe that they are in compliance with all the Code provisions.

5. List and attach any documents you wish to submit in support of your appeal.

Correspondence between the parties and all exhibits submitted at trial (see attached hereto Exhibit 2)

EXHIBIT 1



Chandler + Arizona
Where Values Make The Difference

January 20, 2011

Mr. Karl T. Scholes
Bueler Jones
1300 N. McClintock Drive
Suite 84
Chandler, Arizona 85226

RE: ALLSHOUSE'S BACKYARD AWNING
Zoning Determination

Dear Mr. Scholes:

I have reviewed the documents accompanying your January 19, 2011 letter and the specific applicable portion of the Chandler zoning code.

The awning is a structure defined as one "that is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed or parts joined together in some definite manner".

The awning is a building defined as "any structure used or intended for supporting or sheltering any use or occupancy."

It is therefore determined that the awning as a structure and a building must comply with the minimum building setbacks required for the zoning district in which it is located. The awning as exhibited in the photographs accompanying the January 19, 2011 letter is not legally allowed under the Chandler zoning code and must be removed or modified.

Sincerely,

Jeffrey A. Kurtz
Zoning Administrator

JAK/jr

Mailing Address
Mail Stop 105
PO Box 4008
Chandler, Arizona 85244-4008

Planning & Development Department
Current Planning
Telephone (480) 782-3051
Fax (480) 782-3075
www.chandleraz.gov

Location
215 East Buffalo Street
Chandler, Arizona 85225

EXHIBIT 2

302-26-576

302 26 575

CaseVAR07-
0008



Name:

Description:

Variance

Case Details

Applicant:

TED SCHEUFLER
TEMPE, AZ, 85284
Home Phone: 602 432-4978

Work Location:

2706 N
DAKOTA
ST
CHANDLER

Project Description:

2706 N DAKOTA ST
SCHEUFLER
TED/DEBRA/VARIANCE
TO ALLOW TO
COMPLETE BUILDING
STORAGE SHED.

Owner:

SCHEUFLER
TED/DEBRA
2706 N
DAKOTA ST
CHANDLER
85225

▼ More Details

Parcel Information

Parcel Number:

30226576

Lot:

24

Subdivision:

DAVE BROWN UNIT TWO

Tract:

07

Legal Description:

DAVE BROWN UNIT 2 MCR 213-35

Land Value:

38200

Improved Value:

152800

▼ Fees

Paid:

Date	Invoice Number	Amount	
04/06/2007	73274	\$100.00	View Details

Total paid fees: \$100.00

▼Inspections

No records found.

▼Processing Status



Application Processing

Routed 11/04/2009



Planning

In Review 11/04/2009

Active 04/07/2007

Approved 12/31/2999



Board of Adjustment

Denied 11/04/2009



Case Closed

Closed 11/04/2009

▼Attachments

Attachment List

If you can see this text, your browser does not support iframes. [View the content of this inline frame](#) within your browser.

If you can see this text, your browser does not support iframes. [View the content of this inline frame](#) within your browser.

▼Related Files

No records found.

▼Valuation Calculator

Showing 0-0 of 0

<u>Occupancy</u>	<u>Type</u>	<u>Quantity</u>	<u>Unit</u>
------------------	-------------	-----------------	-------------

No records found.



Chandler + Arizona
Where Values Make The Difference

City of Chandler, Planning & Development
215 East Buffalo Street
Chandler, AZ 85225

Building Inspections: (480) 782-3100
Sign Inspections: (480) 782-3065
Water Meter Installs: (480) 782-3700

PAID

RECEIPT

RECEIPT NUMBER: 3093

APPLICATION NUMBER:

VAR07-0008

APPLICATION TYPE:

Variance

TRANSACTION DATE:

APRIL 06, 2007

PAYMENT RECEIVED FROM:

NO PAYEE ON RECORD

DESCRIPTION OF WORK:

SCHEUFLER TED/DEBRA/VARIANCE TO ALLOW TO COMPLETE BUILDING STORAGE SHED.

SITE ADDRESS:

2706 N DAKOTA ST, CHANDLER

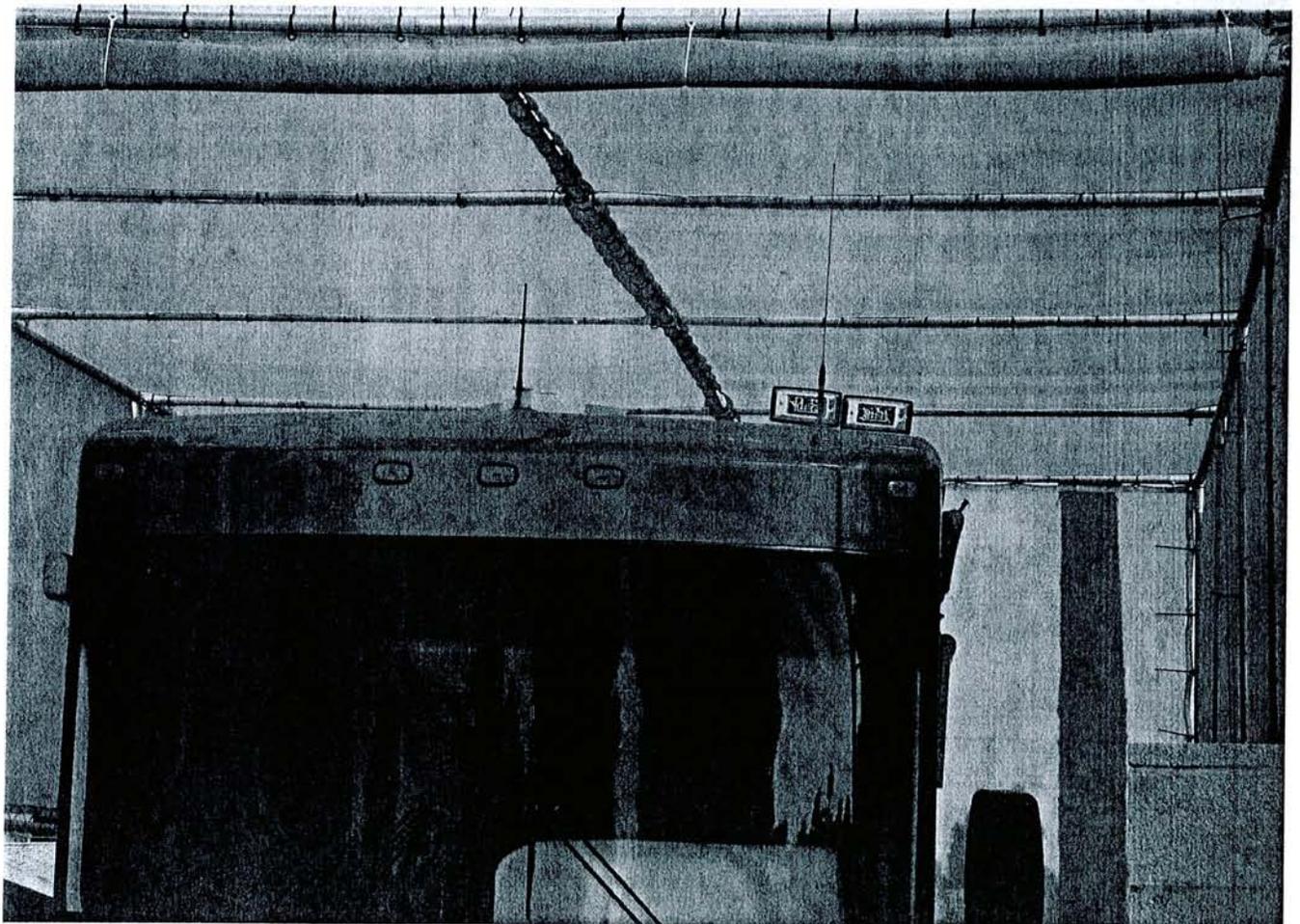
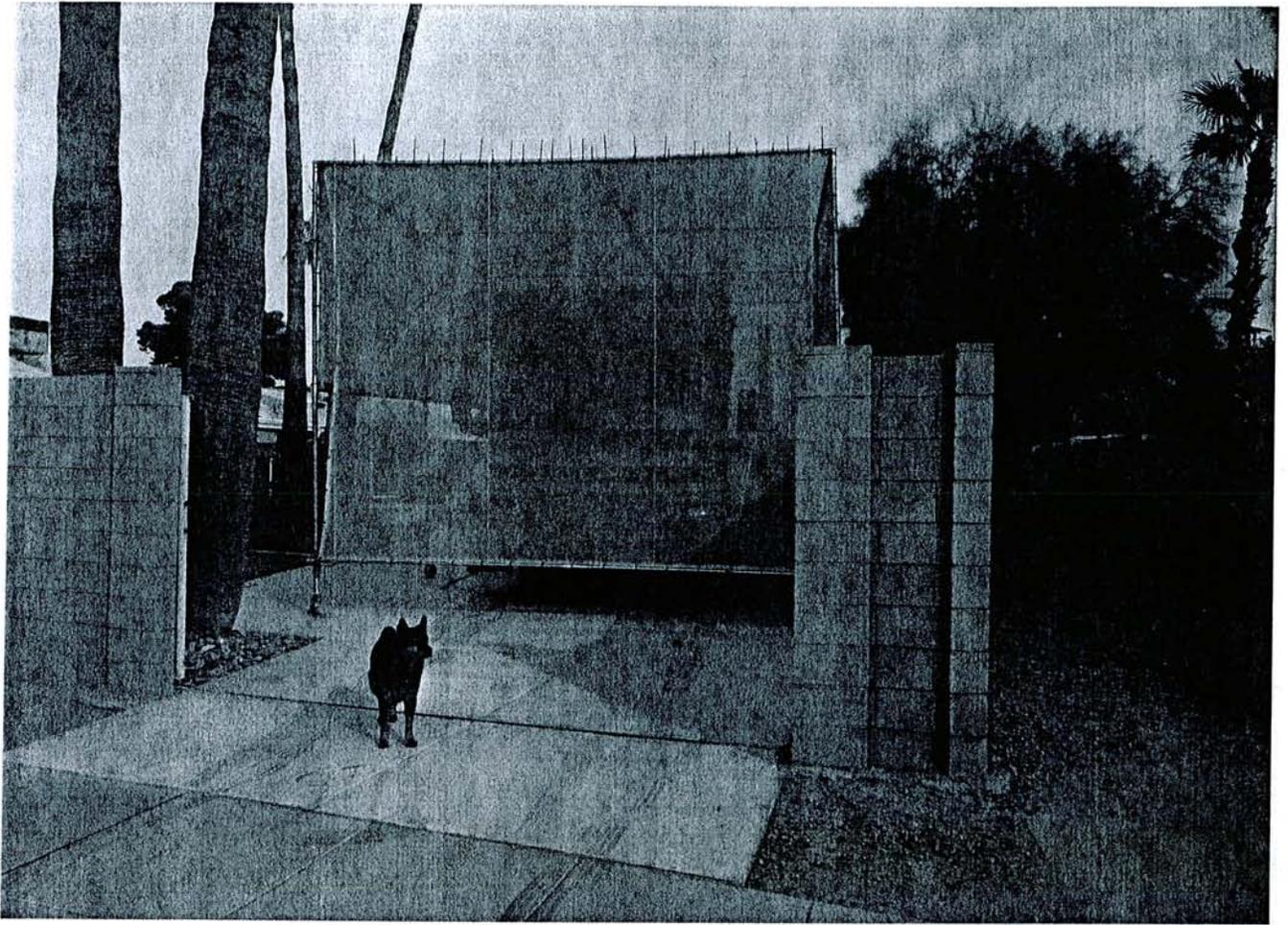
PAYMENT METHOD	CHECK #	COMMENT	AMOUNT
CHECK	5160	RecptNo:R07002348 Notation:2/TEC SCHEUFLER/5160	\$100.00

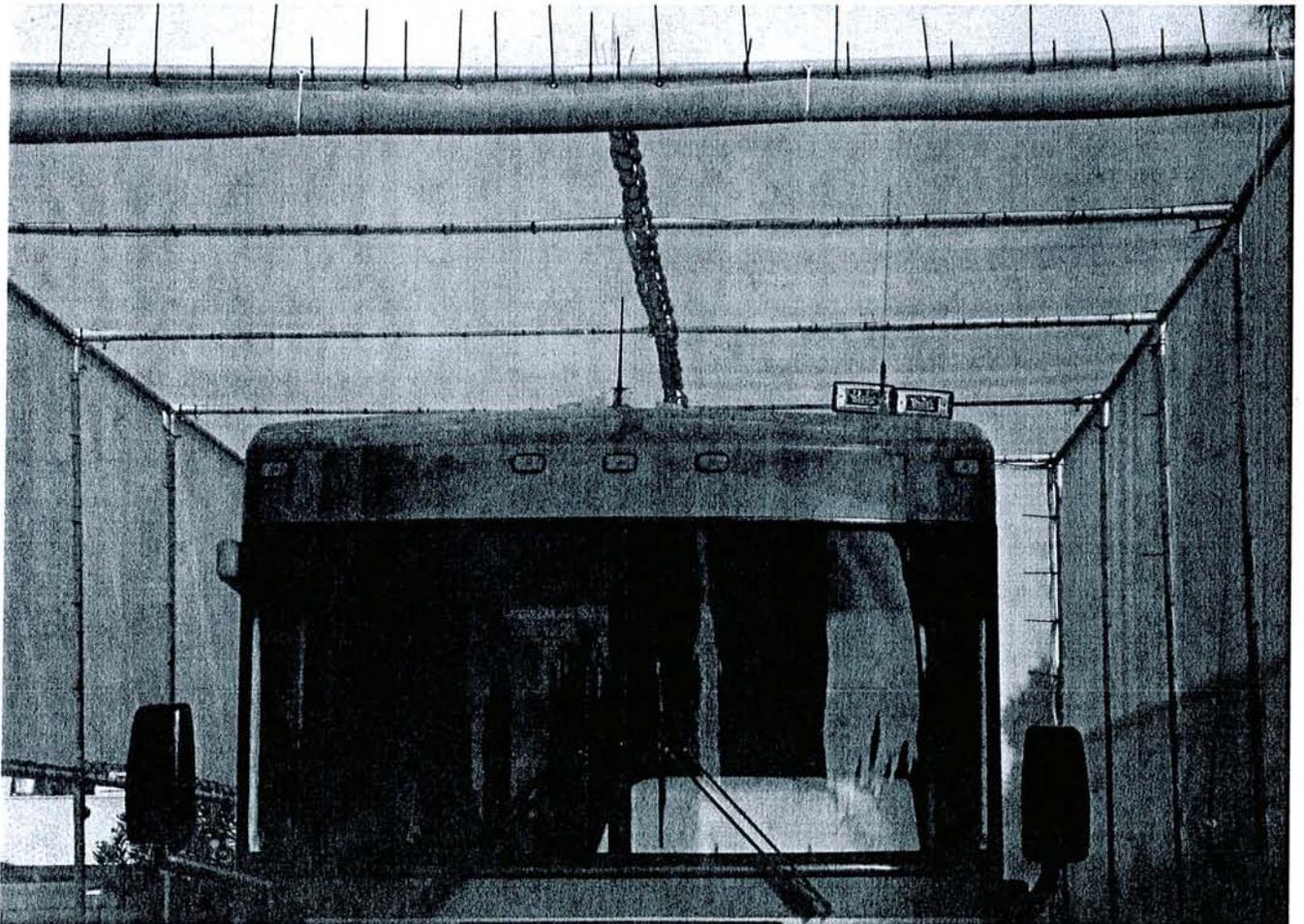
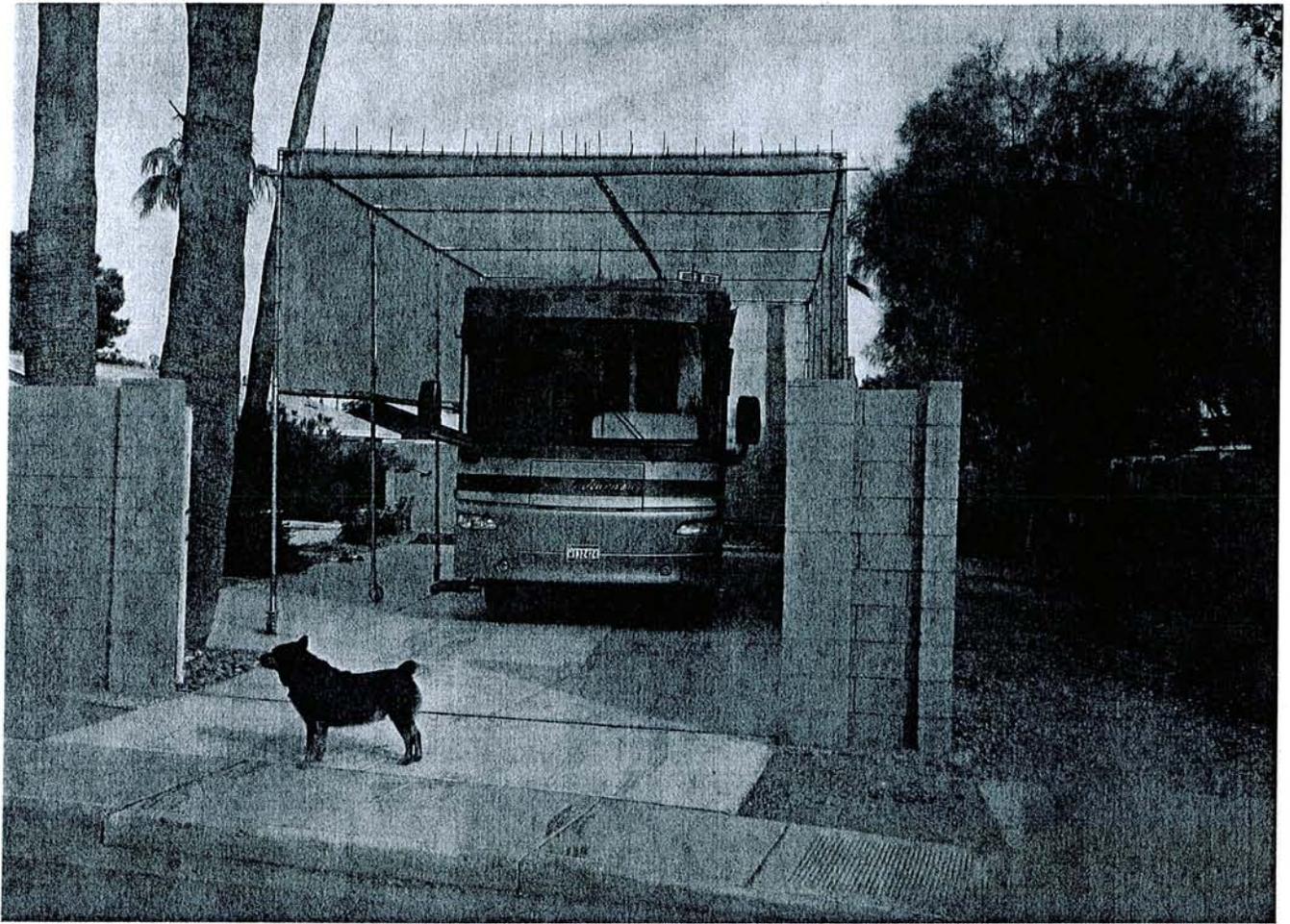
CASHIER:

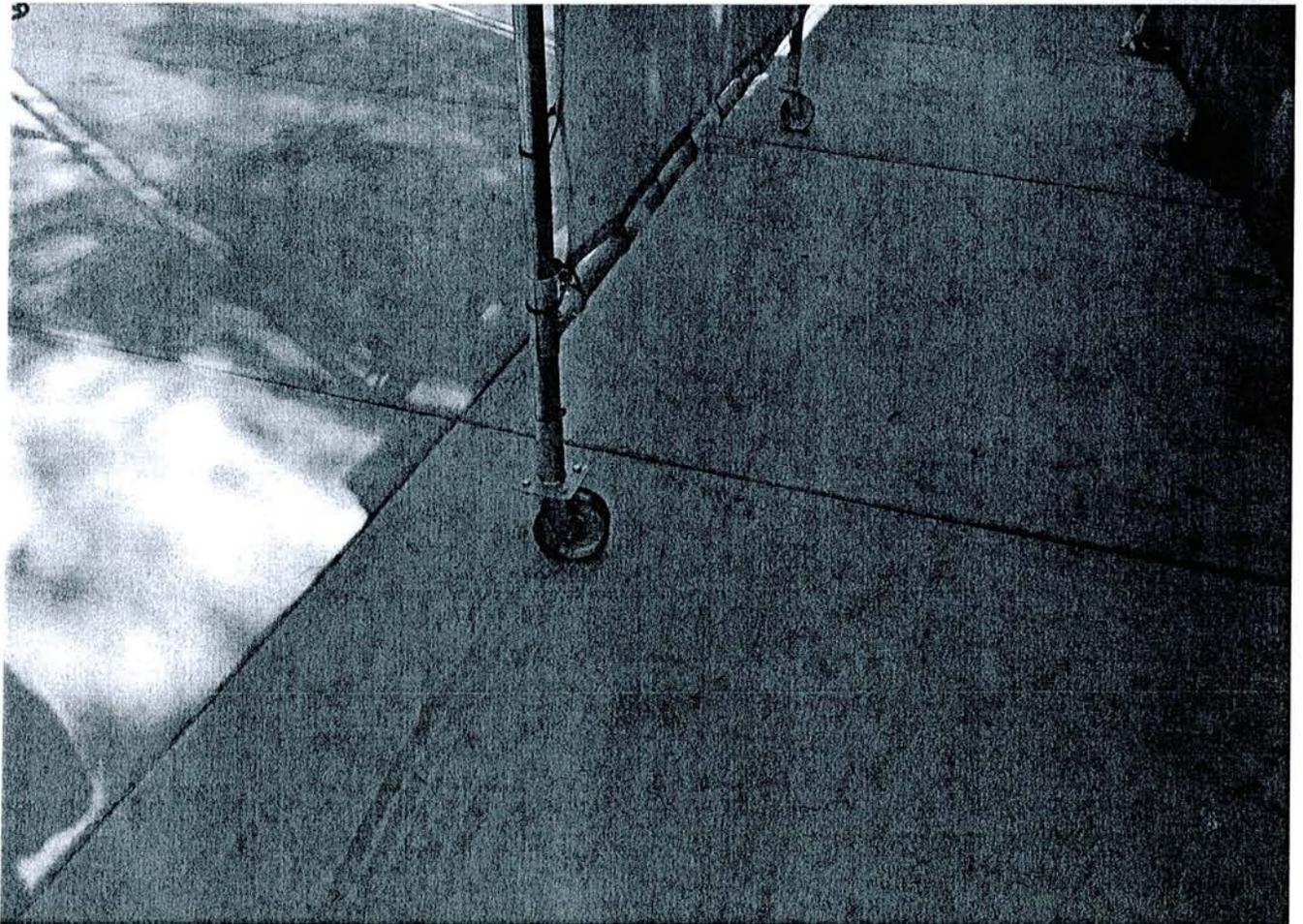
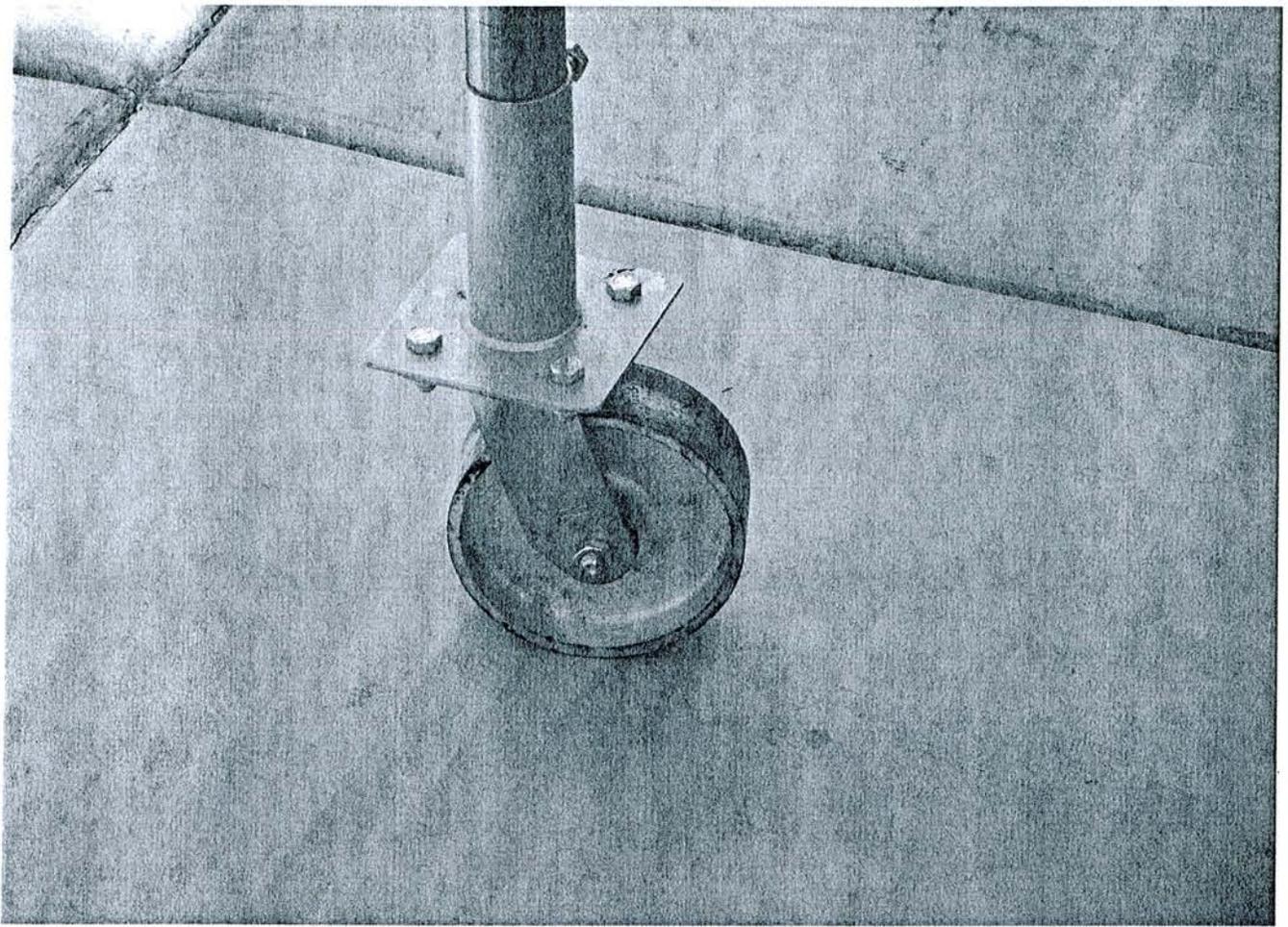
PAYMENT DETAILS

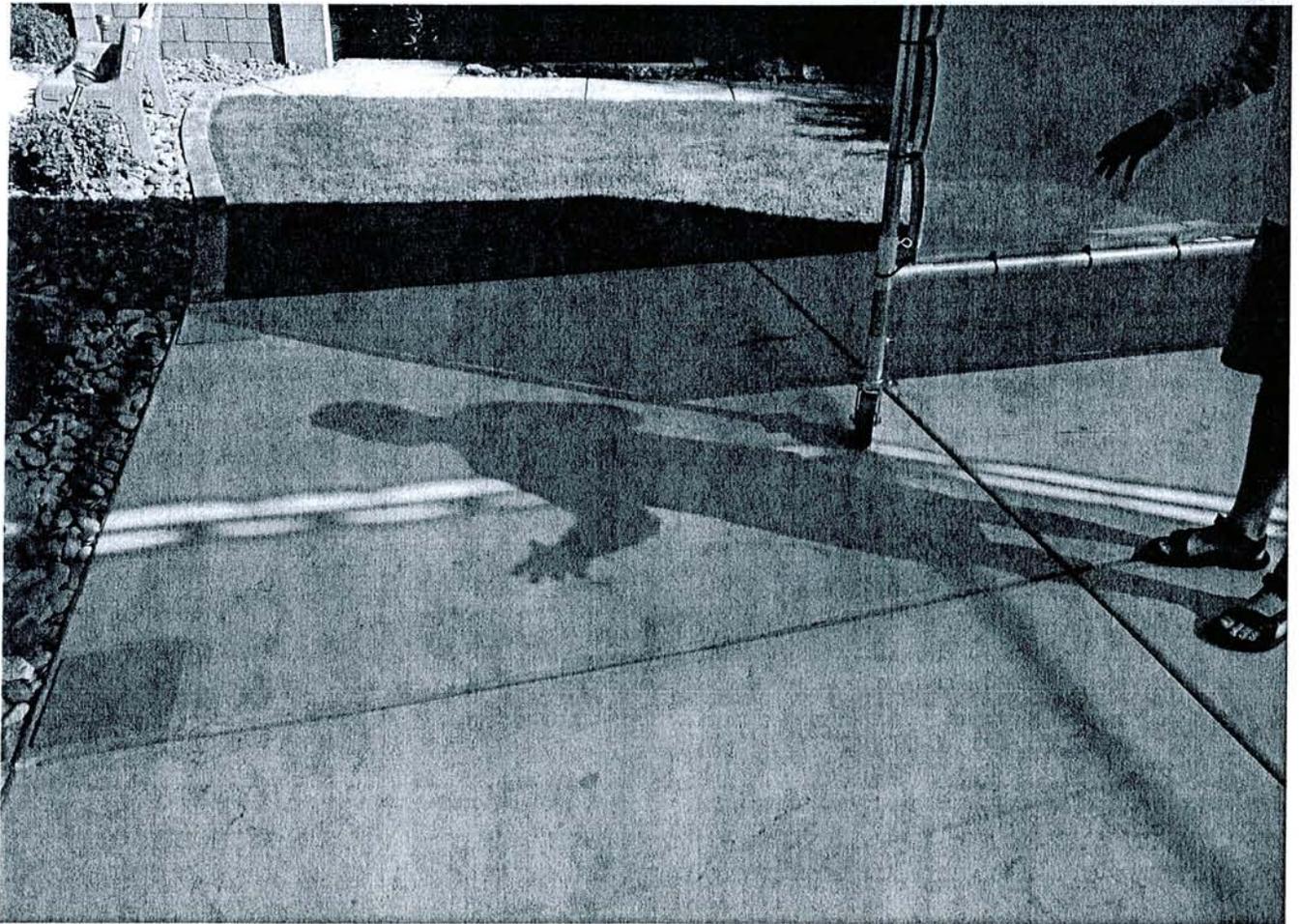
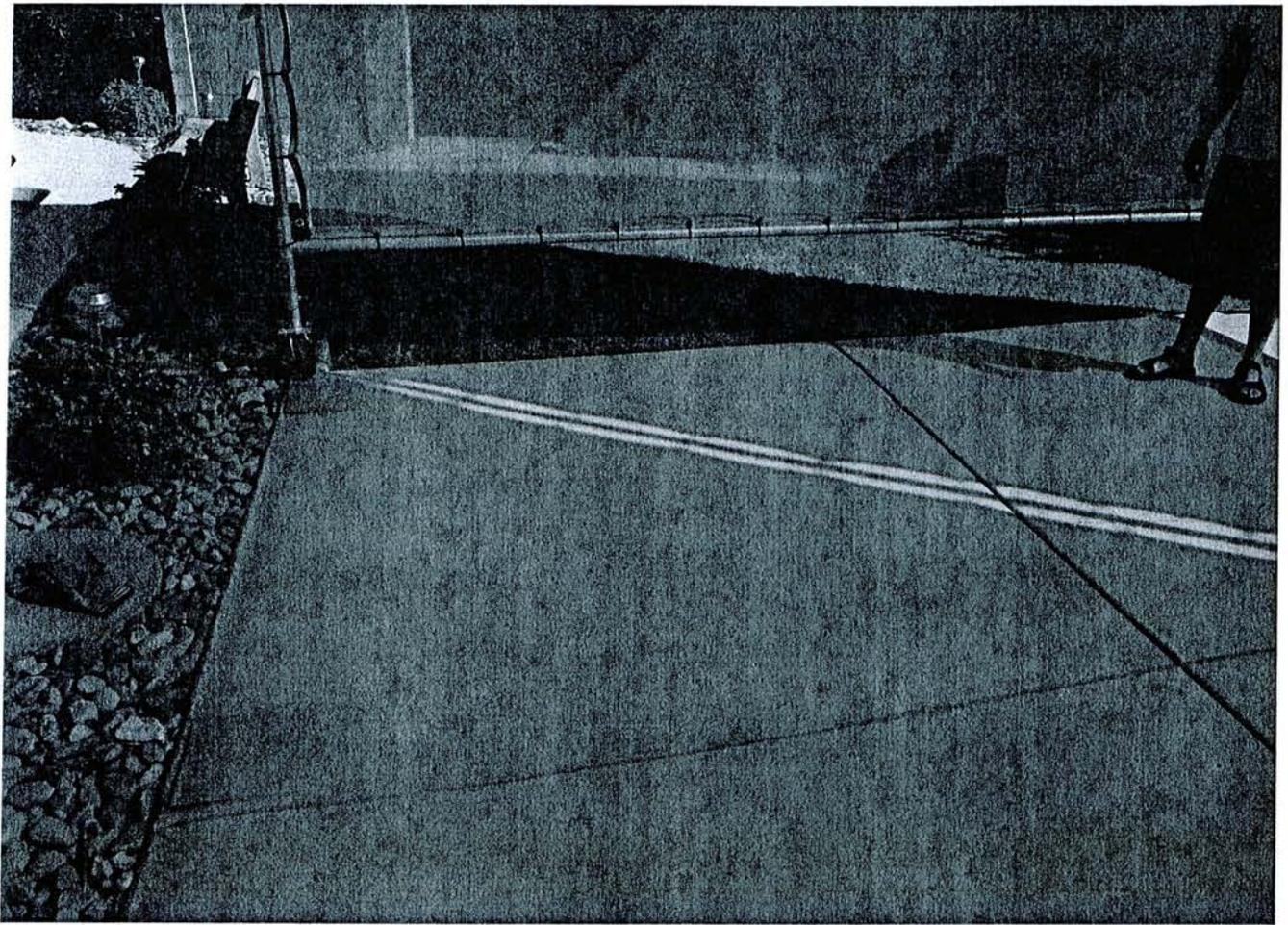
<u>INVOICE</u>	<u>FEE ITEM</u>	<u>AMOUNT</u>
73274	VARIANCE	\$100.00

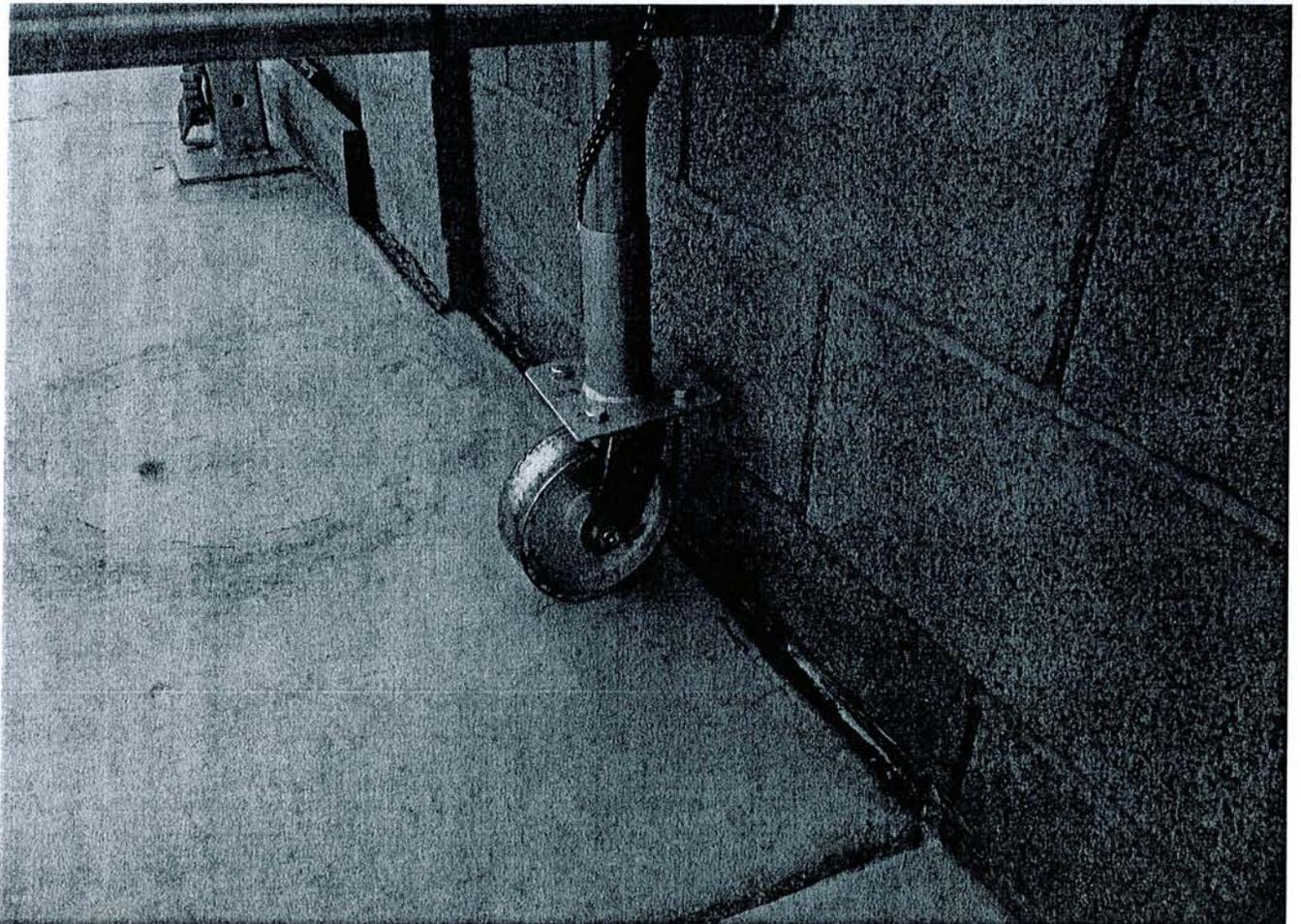
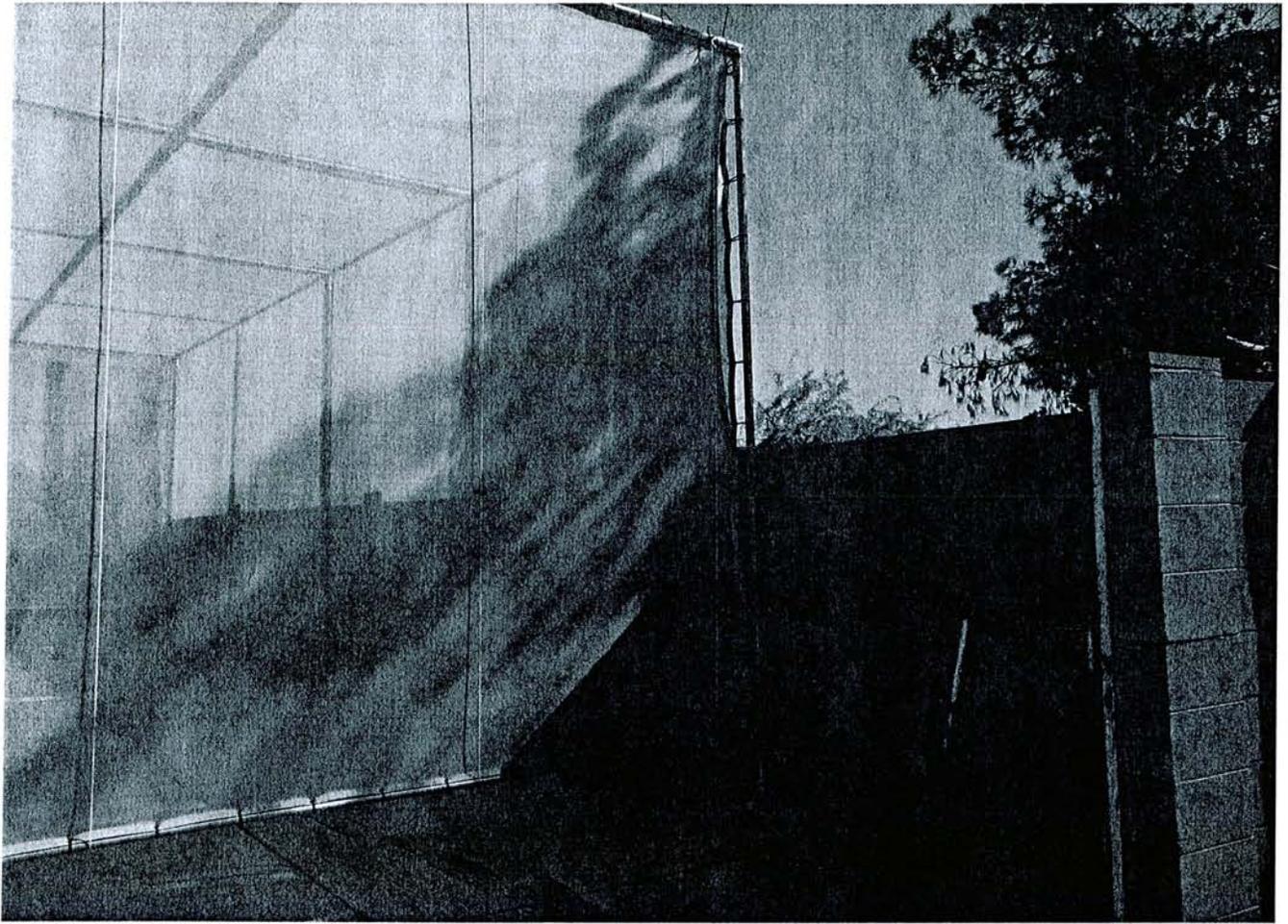
TOTAL PAID: \$100.00

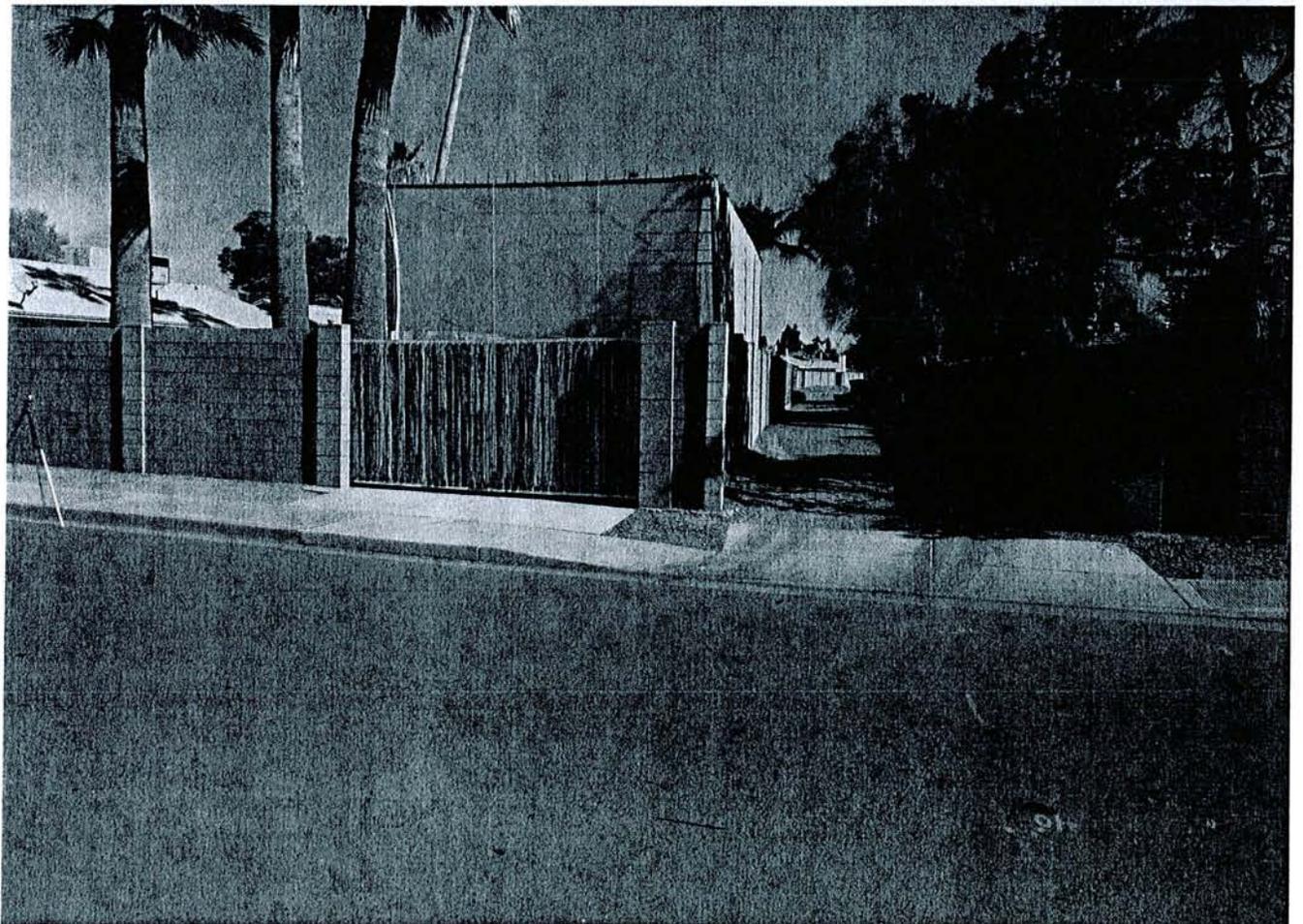
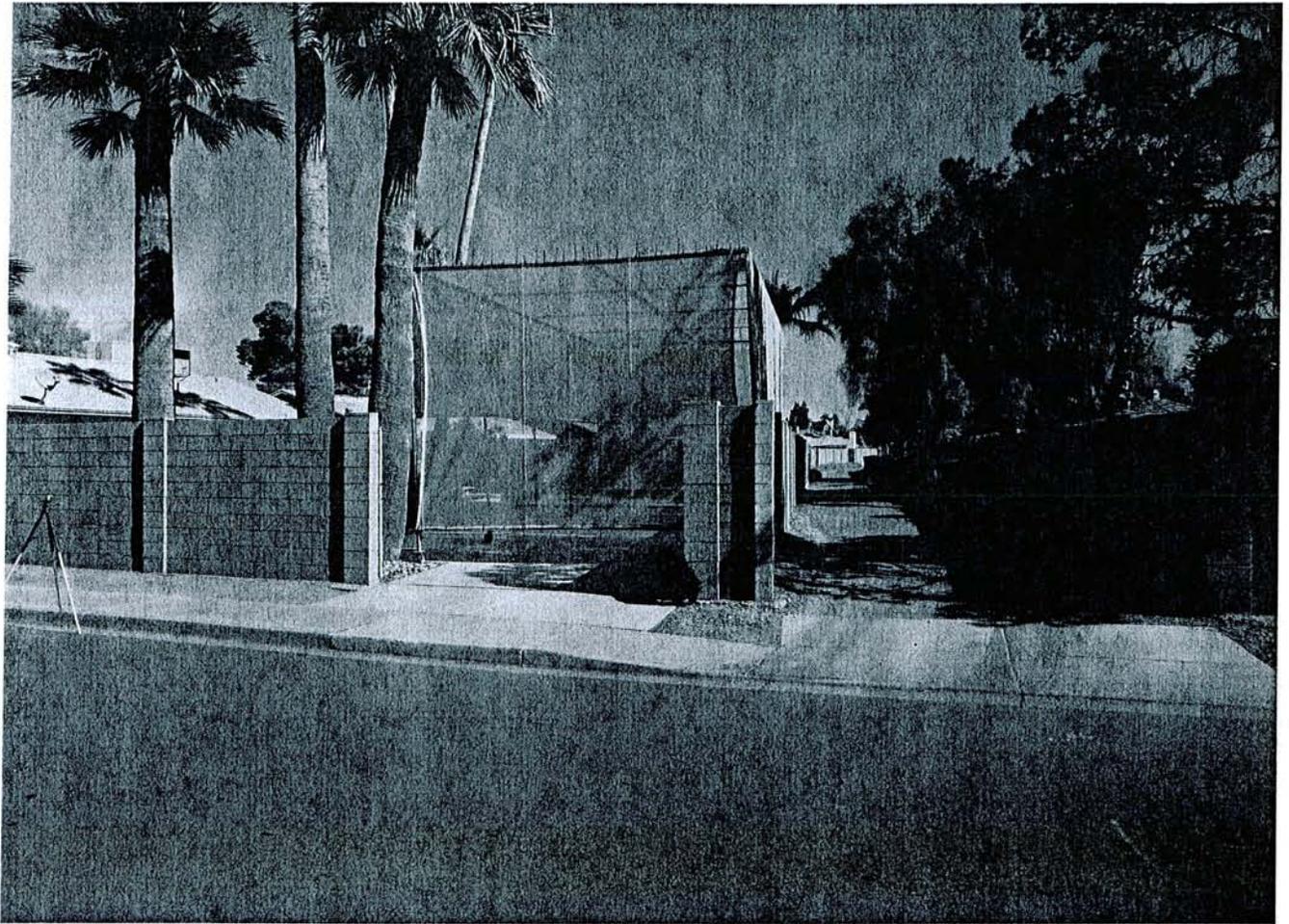














January 19, 2011

Jeff Kurtz
Ass't Planning & Development Director
City of Chandler
88 E. Chicago St.
Chandler, AZ 85225

Re: David and Candace Allshouse's Backyard Awning

Dear Mr. Kurtz:

We represent David and Candace Leigh Allshouse. We write to request that you provide a determination that the Allshouses' awning is, under the Chandler City Code, personal property.

Allow us to provide the factual history of the matter so you may better understand the circumstances. The Allshouses have owned and stored a motor home at their residence on West Marlboro Drive for over 15 years. During that time, they have never had any complaints from neighbors or issues with the City. In 2009, Mr. Allshouse noticed that the sunlight was damaging the motor home and he constructed a cover to protect it. The Allshouses received a warning notice on November 17, 2009, reportedly because of a complaint from a neighbor.

In response to the complaint, the Allshouses contacted the City to resolve the matter. The City instructed them to apply for a variance that would allow them to maintain the cover on the property. In April 2010, the City denied the variance and told to the Allshouses to remove the structure. During the variance hearings, a person on the panel indicated that if the structure were moveable, it may not be in violation of the code. In response, Mr. Allshouse removed the structure, donated it to a church, and then set up an awning on wheels as a replacement. The replacement awning is made of canvas and steel, and is portable. The Allshouses use the awning to cover the pool and provide shade during the hottest parts of the summer, and then move the awning back to shade the motor home.

The Allshouses were cited for violating Chandler City Ordinance 35-703(4). They contacted our office and we wrote a letter to the City Manager asking him to remove the citation and requesting the opportunity to meet to resolve the issue. *See attached Letter dated August 16, 2010.* Mr. Glenn A. Brockman, responding on behalf of the City, denied our request.

The matter was forwarded to the City Prosecutor and set for a hearing on January 13, 2011. The parties met on that date, and prior to the court hearing, the prosecutor suggested that the judge was not the proper person to interpret the statute. The prosecutor argued that the best course of

BUELER JONES LLP

1300 N. McCLINTOCK DR. SUITE B4 CHANDLER AZ 85226

PHONE [480] 775 6400 FAX [480] 775 8868 WWW.BUELERJONES.COM

Letter to Jeff Kurtz
January 19, 2011
Page 2

action would be for the City to issue a written interpretation of whether the Allshouses' awning is personal property and not subject to the City's setback requirements. We agreed.

Therefore, this letter is a request that you issue a written interpretation of whether the Allshouses' awning is real or personal property and whether it violates Chandler City Ordinance 37-703(4).

With this letter, I have enclosed pictures and a video of the awning in question. Please let me know if there is anything else that I can provide to facilitate our request.

Cordially,

Handwritten signature in black ink, appearing to be "Karl T. Scholes" and "Bueler Jones" written together.

Karl T. Scholes
Bueler Jones

/bms

Enclosure



August 16, 2010

City Manager
City of Chandler
55 N. Arizona Pl. Suite 301
Chandler, AZ 85225

Re: David Allshouse
Backyard Structure

Dear Mr. Dlugas:

We represent David Allshouse. As you know, the City of Chandler recently took issue with an awning in Mr. Allshouse's backyard. Since the time the City has made Mr. Allshouse aware of the issue, he has done his best to work with the city – even going as far as appearing at a City Council meeting – to find a resolution to the problem. Despite his efforts, he received a citation for the awning. Mr. Allshouse has been cited in error, and his case deserves reconsideration.

Mr. Allshouse was cited under a city ordinance that does not apply to his situation. The City of Chandler cited Mr. Allshouse under Chandler City Ordinance 35-703(4), which states, "No rear yard shall be less than ten (10) feet." The citation under this ordinance is obviously an error. Mr. Allshouse's rear yard is ten feet, and the awning does not affect it. He did not violate 35-703(4), and the citation should be withdrawn.

The awning is Mr. Allshouse's *personal* property, not part of the home, and does not violate Chandler's Height and area regulations. Chandler has set the following regulation for height and area of a building;

No building shall exceed twenty-five (25) feet in height at the building setback line, except any building may exceed such height provided that at no point it projects above a line sloping inward and upward at a forty-five (45) degree angle at the required setback line to a maximum height of thirty-five (35) feet. Chandler City Code 35-403.

This regulation does not apply to the awning in question because it is not a building. It is on wheels. It can – and will – be moved. It can also be disassembled. It does not meet the qualifications anticipated by the code, and Mr. Allshouse cannot be in violation.

The fact that the awning is not a building was also brought up at the City Council meeting. At the meeting, several councilors argued that the awning was personal property. As personal property, it is not in violation of the regulation and the citation against Mr. Allshouse should be revoked.

BUELER JONES LLP

1300 N. McCLINTOCK DR. SUITE B4 CHANDLER AZ 85226

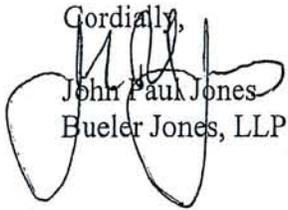
PHONE (480) 775 6400 FAX (480) 775 8868 WWW.BUELERJONES.COM

City Manager
City of Chandler
August 16, 2010
Page 2

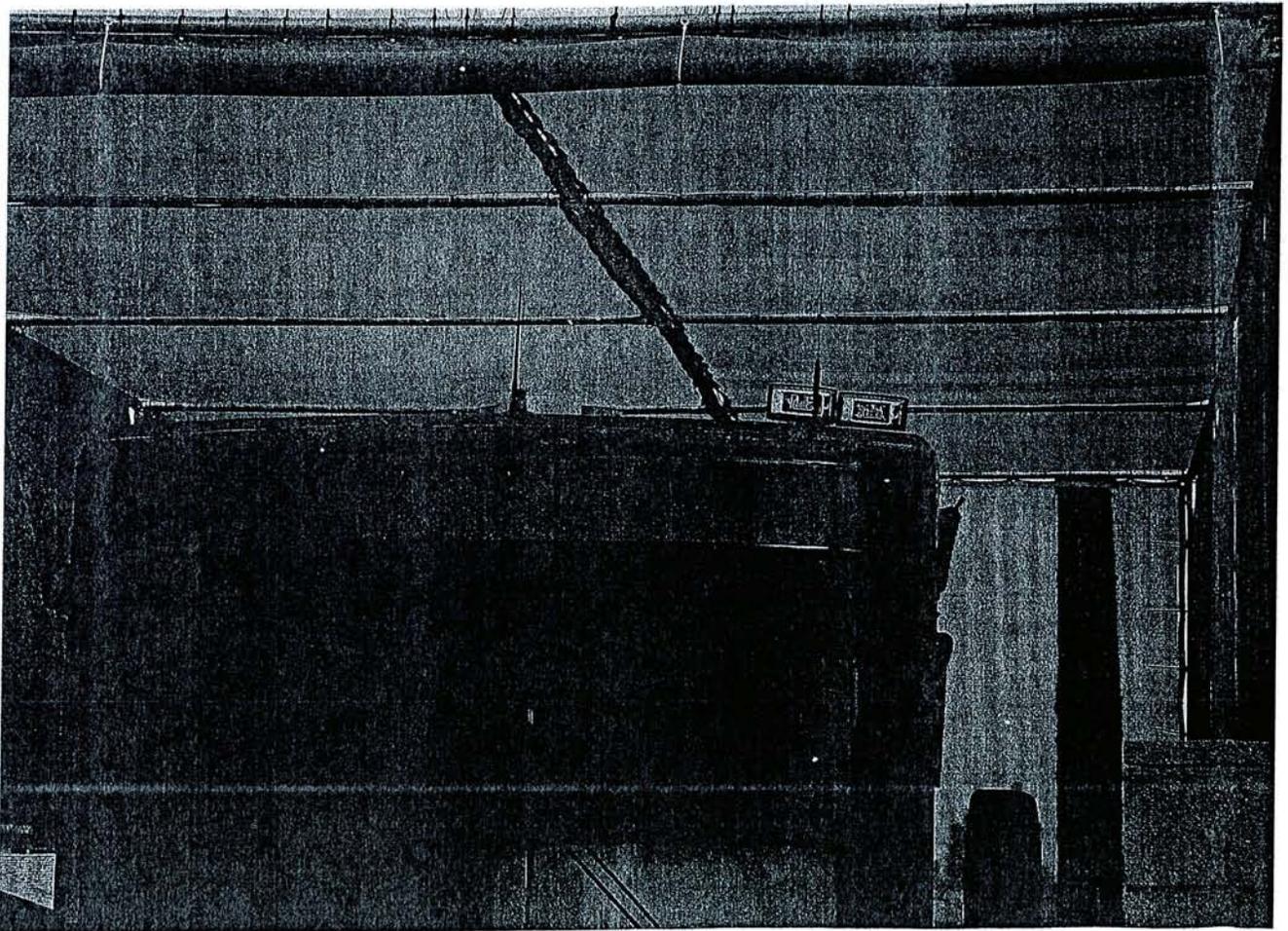
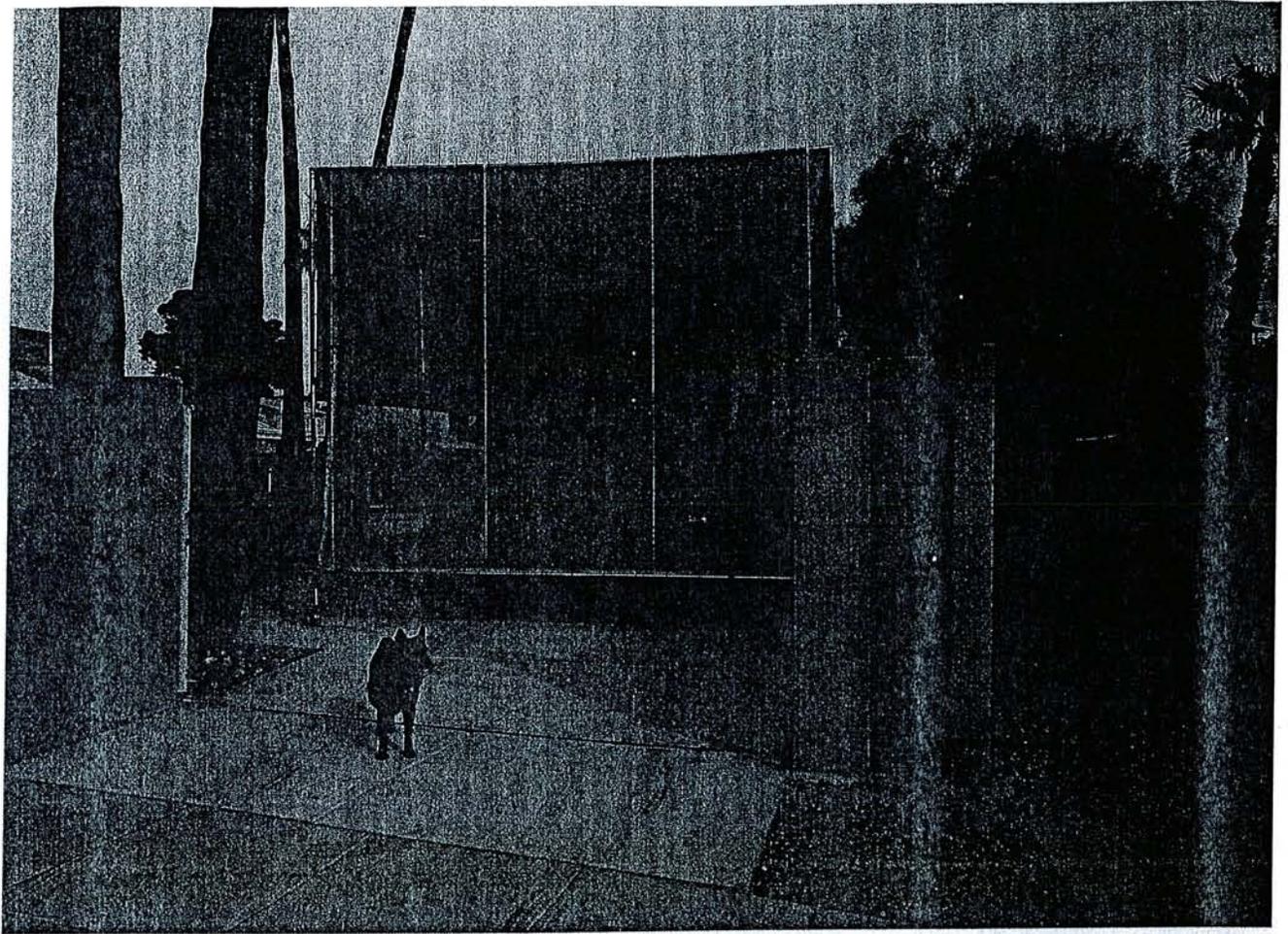
Lastly, if the awning is in violation, then there are eighty properties in Mr. Allshouse's neighborhood that are also in violation of the height and area regulation. As the majority of these properties have had the violations for an extended period of time, Mr. Allshouse can only assume that Chandler is not going after these people. If that is the case, then Mr. Allshouse is being unfairly targeted for his awning. The awning on his property is no different than eighty other properties in his neighborhood and the violation against Mr. Allshouse must be revisited.

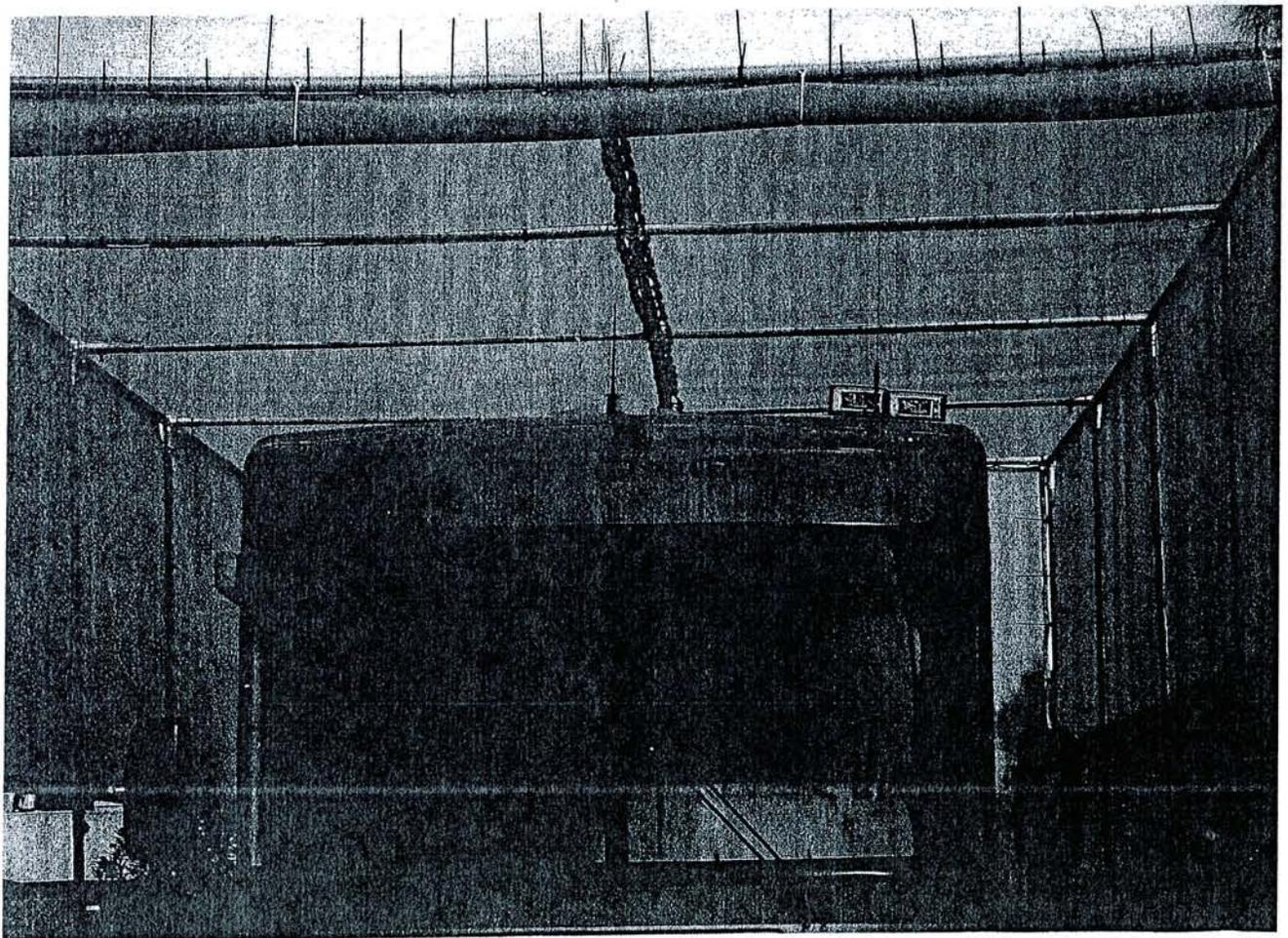
In conclusion, we request that you reconsider the citation against Mr. Allshouse, and revisit the variance that he applied for. We would like to meet with you to discuss this issue. We will follow this letter up with a phone call to discuss possible dates.

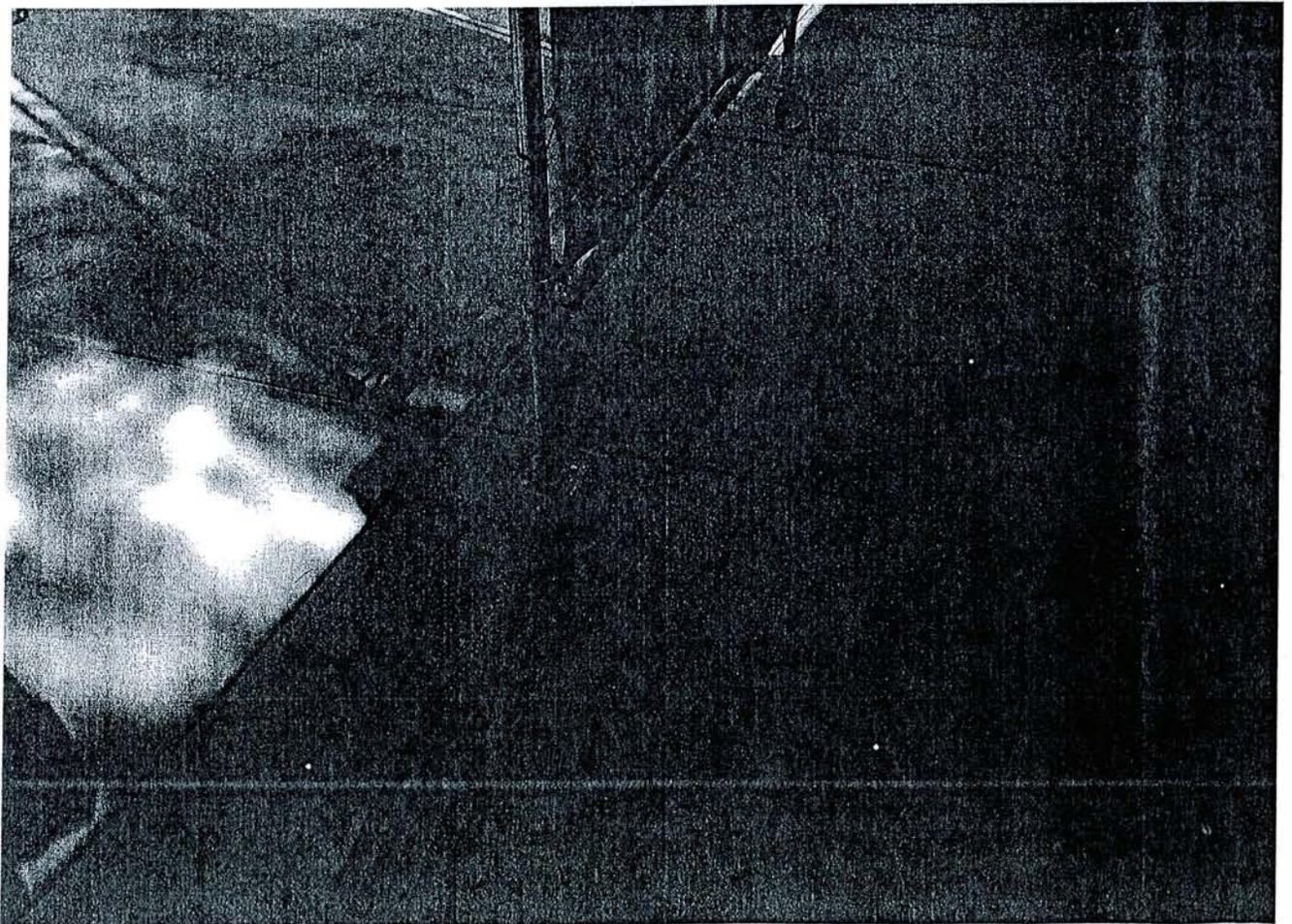
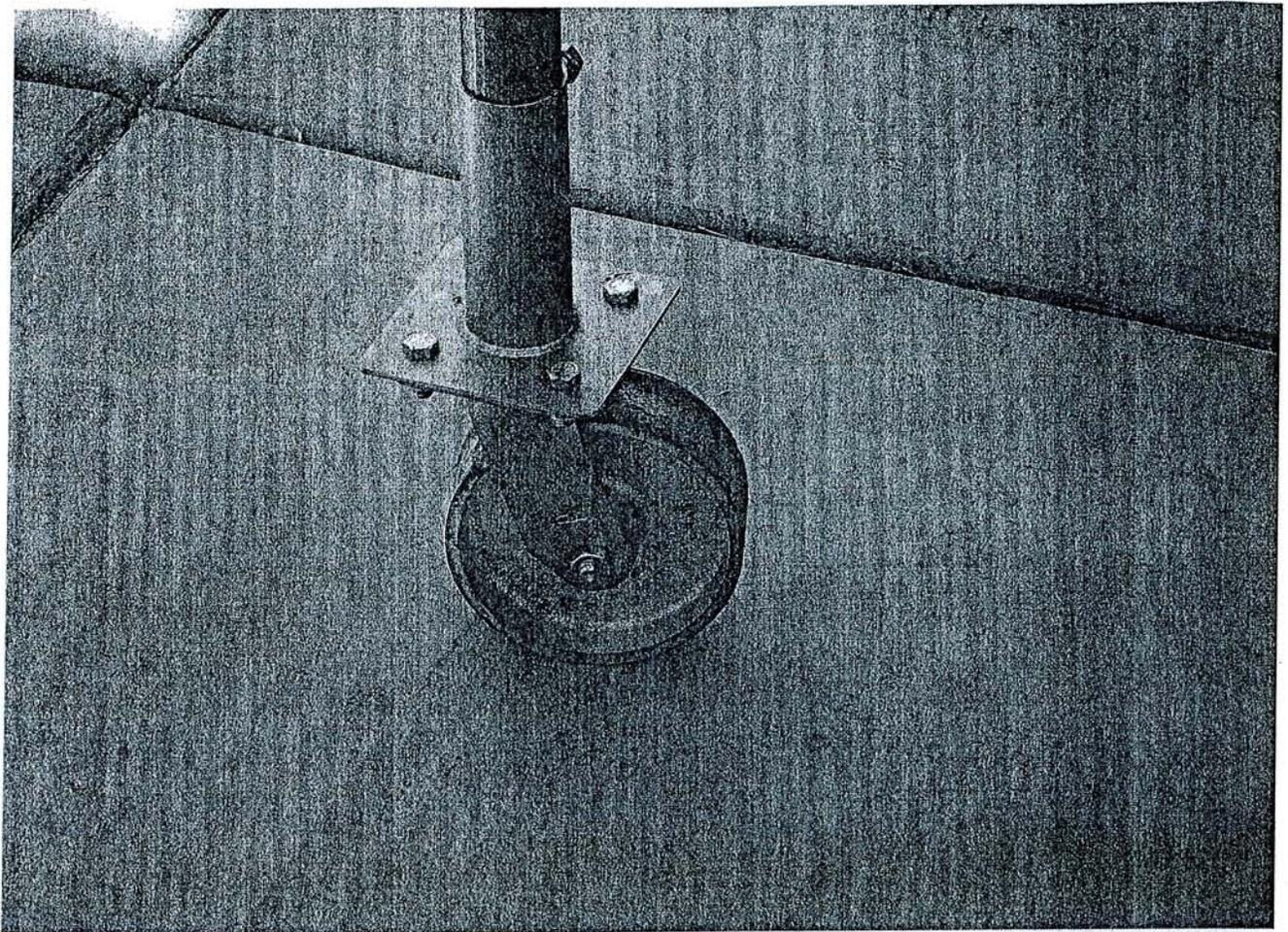
Cordially,

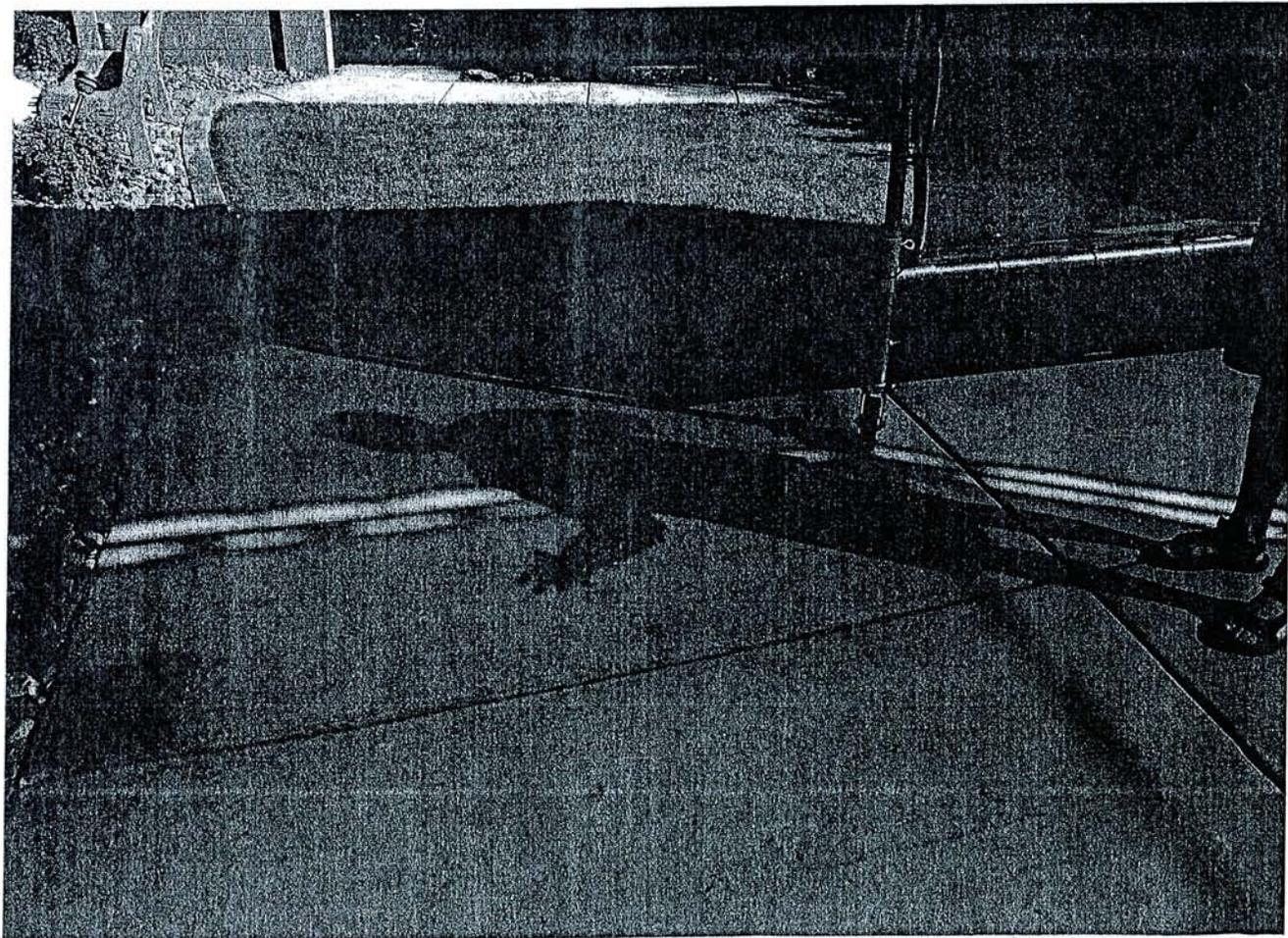
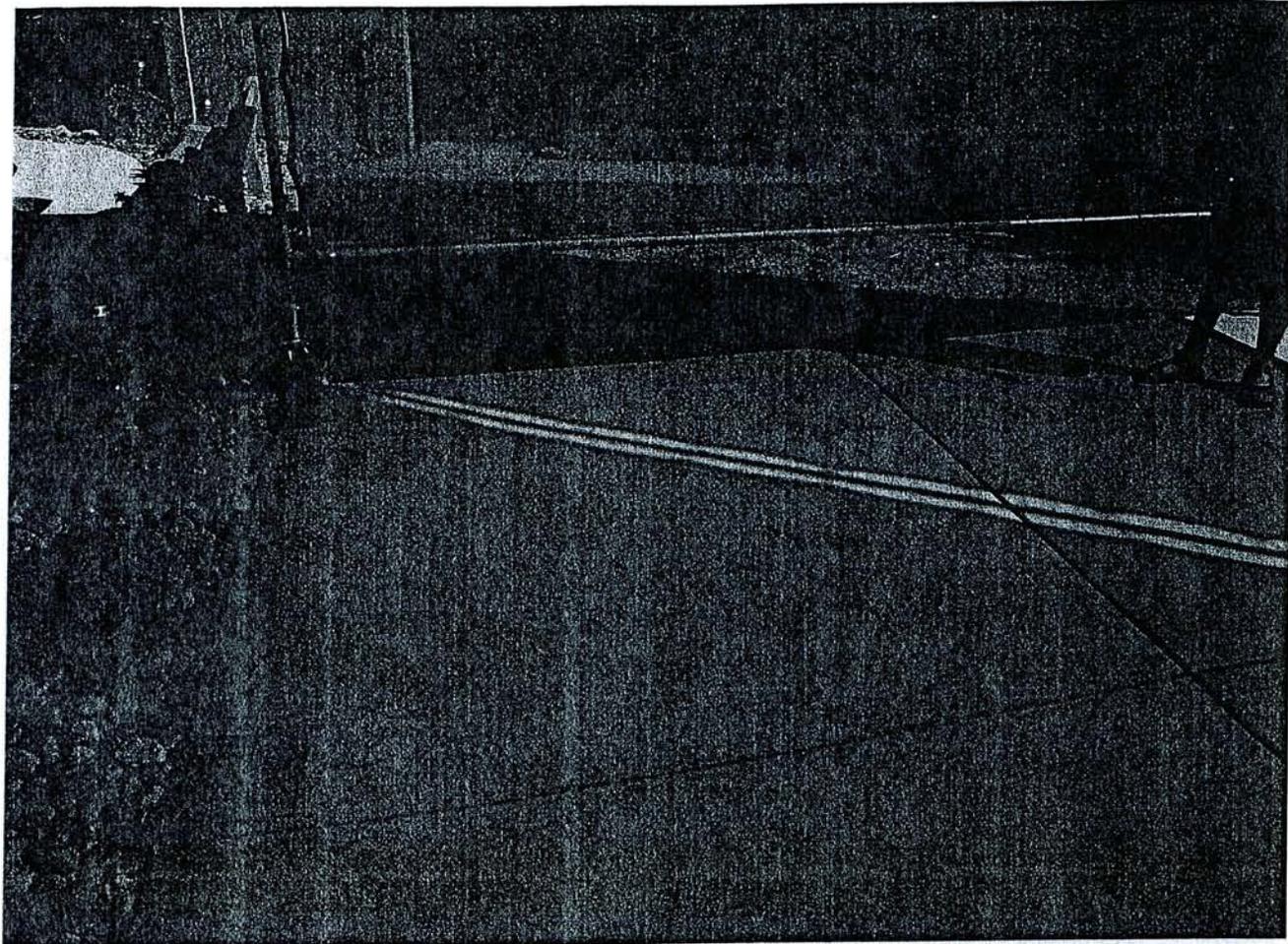


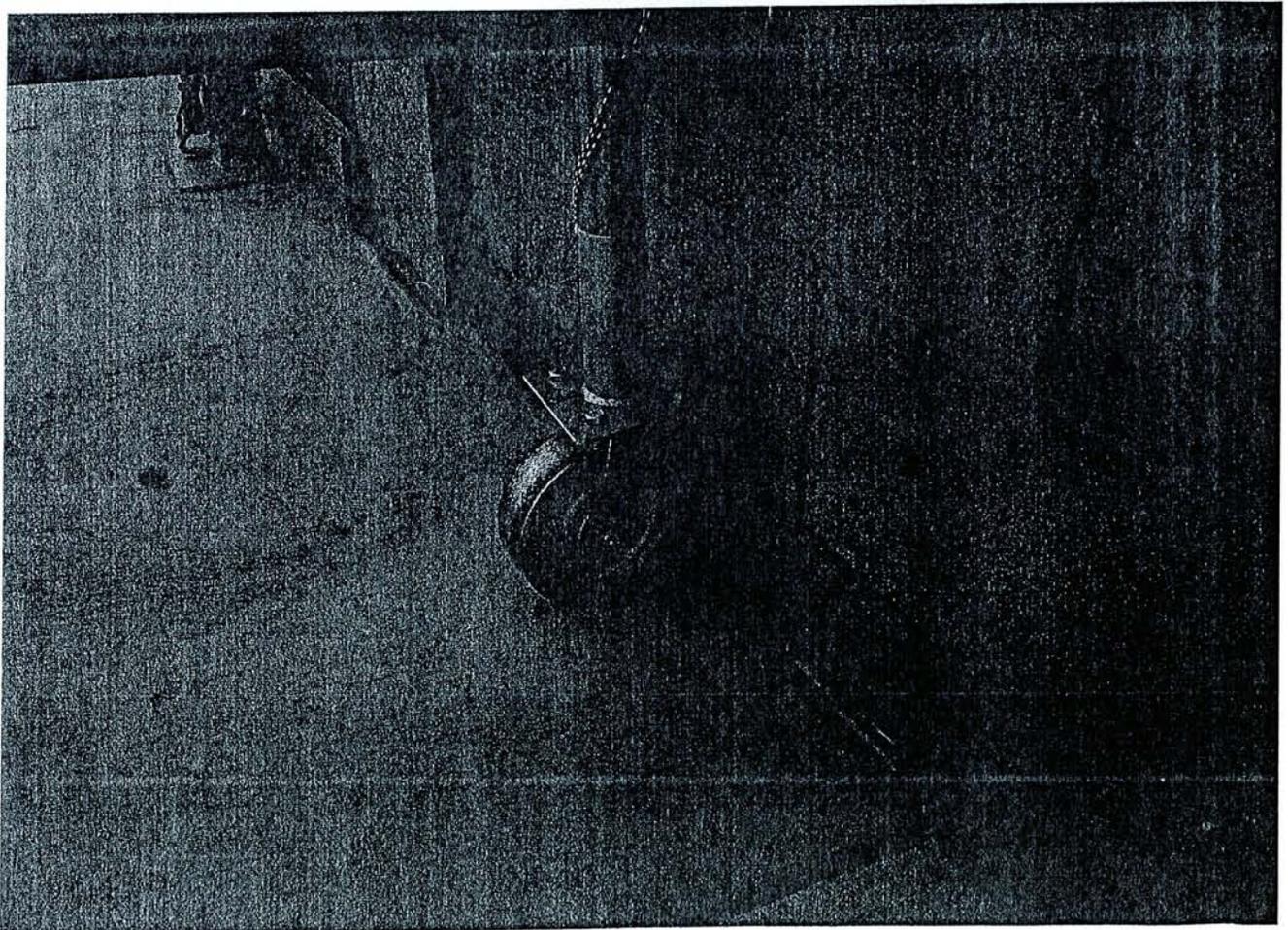
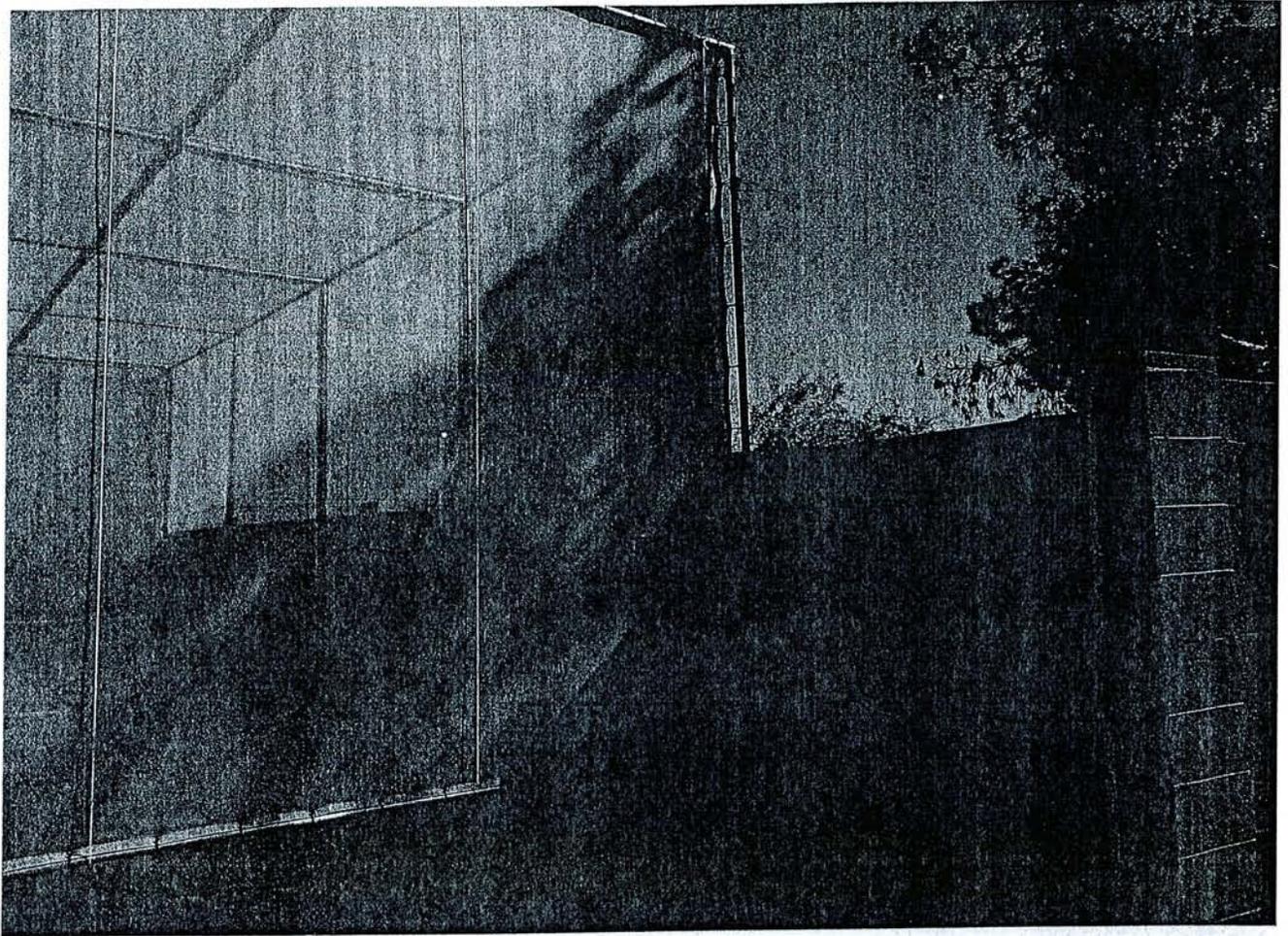
John Paul Jones
Bueler Jones, LLP

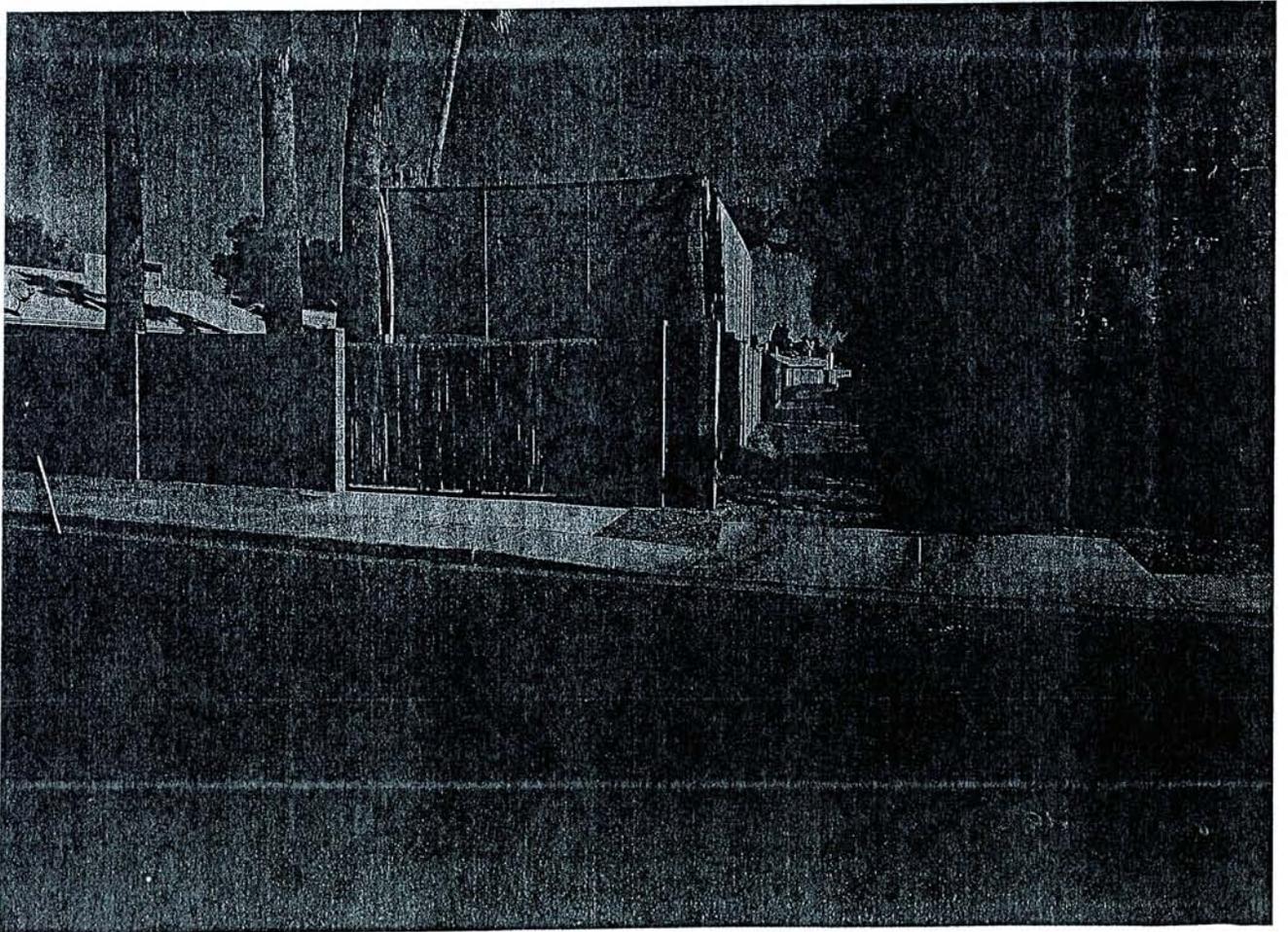
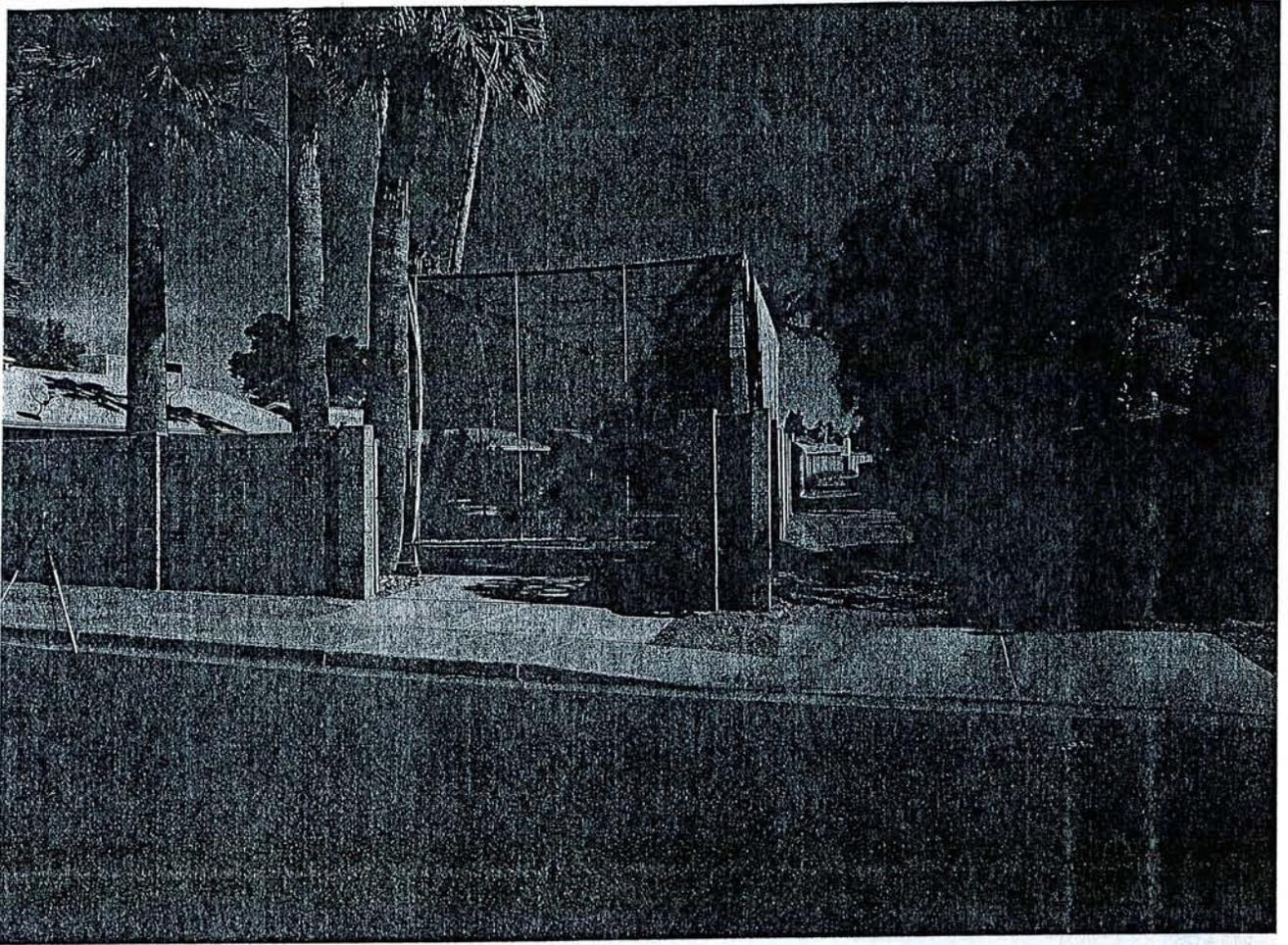












IN THE CHANDLER MUNICIPAL COURT
COUNTY OF MARICOPA, STATE OF ARIZONA
200 East Chicago Street, Chandler, Arizona 85225

STATE OF ARIZONA

Plaintiff,

RELEASE ORDER

10-P-878638

vs.

CANDACE LEIGH

DOB: 03/04/48

Defendant

IT IS HEREBY ORDERED, that the Defendant be released as indicated below and comply with the standard conditions and all other conditions below during the pendency of this case. The victim, if any, has been given notice of today's proceedings as required. The Court has considered the views and comments of the victim, if any, on the issue of the Defendant's conditions of release and the victim's rights to a speedy trial.

The Defendant shall appear in Chandler Municipal Court at 200 E. Chicago St., Chandler Arizona for **NON-JURY TRIAL** on 01/13/11 at 10:00 AM - Duration 02:00 hour(s) (Report to Judge R. Michael Traynor, Courtroom # 7) .

WARNING TO DEFENDANT

You have a right to be present at all proceedings. If you do not appear at the time set by the Court, a warrant will be issued for your arrest, your bond will be forfeited, and the trial or other proceeding will take place in your absence.

STANDARD CONDITIONS OF RELEASE

THE COURT DOES NOT FIND THAT IMPOSITION OF A SECURED BOND IS NECESSARY TO ASSURE THE DEFENDANT'S APPEARANCE AS REQUIRED.

ATTORNEY: Karl Scholes 480-775-6400

1. Appear at the court hearing listed above and attend all future court hearings;
2. Refrain from committing any criminal offense;
3. Not depart the state without leave of the Court and promptly notify the Court in writing in the event you change your address.
4. Diligently pursue any appeal if released from custody after judgment and sentence has been imposed.
5. Keep-in contact with your attorney.

R. MICHAEL TRAYNOR

DEC 01 2010

R. Michael Traynor

Date

CONSEQUENCES OF VIOLATING THIS ORDER

In addition, the Court may issue a warrant for the Defendant's arrest upon learning of a violation of any of the conditions of release. After a hearing, if the Court finds that the Defendant has not complied with the conditions of release, it may modify the conditions or revoke the release altogether.

ACKNOWLEDGEMENT BY DEFENDANT

I understand the standard conditions and all other conditions of my release checked above and the forfeitures and penalties applicable in the event I violate them. I agree to comply fully with each of the conditions imposed on my release and to promptly notify the Court in writing in the event I change the address indicated below.

Defendant

Phone

Address

Apt#

City/State/Zip

END OF DOCUMENT (Release Order)

IN THE CHANDLER MUNICIPAL COURT
COUNTY OF MARICOPA, STATE OF ARIZONA
200 East Chicago Street, Chandler, Arizona 85225

STATE OF ARIZONA

Plaintiff,

RELEASE ORDER
10-P-878639

vs.

DAVID JAMES ALLSHOUSE
DOB: 03/18/63

Defendant

IT IS HEREBY ORDERED, that the Defendant be released as indicated below and comply with the standard conditions and all other conditions below during the pendency of this case. The victim, if any, has been given notice of today's proceedings as required. The Court has considered the views and comments of the victim, if any, on the issue of the Defendant's conditions of release and the victim's rights to a speedy trial.

The Defendant shall appear in Chandler Municipal Court at 200 E. Chicago St., Chandler Arizona for **NON-JURY TRIAL** on 01/13/11 at 10:00 AM - Duration 02:00 hour(s) (Report to Judge R. Michael Traynor, Courtroom # 7).

WARNING TO DEFENDANT

You have a right to be present at all proceedings. If you do not appear at the time set by the Court, a warrant will be issued for your arrest, your bond will be forfeited, and the trial or other proceeding will take place in your absence.

STANDARD CONDITIONS OF RELEASE

THE COURT DOES NOT FIND THAT IMPOSITION OF A SECURED BOND IS NECESSARY TO ASSURE THE DEFENDANT'S APPEARANCE AS REQUIRED.

ATTORNEY: Karl Scholes 480-775-6400

1. Appear at the court hearing listed above and attend all future court hearings;
2. Refrain from committing any criminal offense;
3. Not depart the state without leave of the Court and promptly notify the Court in writing in the event you change your address.
4. Diligently pursue any appeal if released from custody after judgment and sentence has been imposed.
5. Keep in contact with your attorney.

DEC 01 2010

R. MICHAEL TRAYNOR

R. Michael Traynor

Date

CONSEQUENCES OF VIOLATING THIS ORDER

In addition, the Court may issue a warrant for the Defendant's arrest upon learning of a violation of any of the conditions of release. After a hearing, if the Court finds that the Defendant has not complied with the conditions of release, it may modify the conditions or revoke the release altogether.

ACKNOWLEDGEMENT BY DEFENDANT

I understand the standard conditions and all other conditions of my release checked above and the forfeitures and penalties applicable in the event I violate them. I agree to comply fully with each of the conditions imposed on my release and to promptly notify the Court in writing in the event I change the address indicated below.

Defendant

Phone

Address

Apt#

City/State/Zip

END OF DOCUMENT (Release Order)

.Chandler Prosecutor's Office



Chandler + Arizona
Where Values Make The Difference

November 12, 2010

Karl T. Scholes
Bueler Jones LLP
1300 North McClintock Drive, Suite B-4
Chandler, Arizona 85226

RE: State v. David James Allshouse/Candance Leigh
Chandler City Court, Case No. 10-P-878639/10-P-878638

Dear Karl:

I am the attorney representing the State in the above-referenced matter. I wanted to give you my contact information and send you a copy of the discovery that I have. This includes both the current police report (10-05-6246) and the prior case report (09-13-2252), along with photographs and some miscellaneous other materials.

It appears that these matters are set for a non-jury trial on December 23, 2010. If that date is bad for either you or your clients, please let me know. I would have no objection to setting this when convenient for you both. In the meantime, please feel free to call me at (480) 782-4616 or email me at john.belatti@chandleraz.gov if you have any questions.

Sincerely,

John L. Belatti
Chandler City Prosecutor

JLB/encl.



Chandler • Arizona
Where Values Make The Difference

10/20 ARK
10-P-878639

RECEIVED

SEP 29 2010

PROSECUTOR'S
OFFICE

September 28, 2010

John Paul Jones
Bueler Jones, LLP
1300 N. McClintock Dr., Suite B4
Chandler, AZ 85226

Re: David Allshouse
Backyard Structure

Dear Mr. Jones:

This letter responds to your correspondence of August 16, 2010, which was directed to the Chandler City Manager and referred on to me. Your correspondence makes reference to a code enforcement action directed against your client, David Allshouse, relating to an "awning" located in the backyard of his residence. You argue that the awning is not a "building" and therefore not subject to the height and area regulations set out in the Chandler Zoning Code. You conclude by requesting that "the citation against Mr. Allshouse" be reconsidered and/or revoked. You also request that the City "revisit the variance that [Mr. Allshouse] applied for."

Code enforcement is handled through the City's Neighborhood Services Department, Code Enforcement Division. For zoning code issues, the Department acts on behalf of the City Planning Division. It is my understanding that, at the time your letter was received, your client may have received notice of a violation, but that no citation for the awning structure had been issued. I don't know if that is still the case. However, any citation or subsequent legal action directed against your client for the awning structure would be based on a collective decision reached between and among personnel in the Code Enforcement Division, the City Planning Division, and the City Prosecutor's office. Accordingly, a copy of your letter is being forwarded to each of those departments so that they have some understanding of your client's position.

Your client did seek to avoid any code enforcement action by requesting a variance from the zoning code requirement. Variances are granted or denied by the Chandler Board of Appeals, not by the Chandler City Council. There was a hearing before the Board, not the City Council. There was some *discussion* about whether the awning structure was personal property or a building subject to the height and area regulations of the Zoning Code. Ultimately, the

John Paul Jones
September 28, 2010
Page 2

Board denied the variance request and your client did not file a timely judicial appeal (special action) to the Superior Court. The variance issue is closed and will not be revisited.

Sincerely,



Glenn A. Brockman
Assistant City Attorney

GAB/

cc: Pat McDermott, Assistant City Manager
John Belatti, City Prosecutor ✓
Rick Brzuchalski, Code Enforcement Manager

IN THE CHANDLER MUNICIPAL COURT
MARICOPA COUNTY, STATE OF ARIZONA

STATE OF ARIZONA, Plaintiff) 10-P-878639
)
vs.) CRIMINAL COMPLAINT AND
) JUDGMENT
DAVID JAMES ALLSHOUSE) MISDEMEANOR
)
Defendant)

The complainant herein personally appears and, being duly sworn, complains on information and belief against defendant charging that in the City of Chandler, Maricopa County, Arizona:

COUNT ONE 35-703.4 HEIGHT AND AREA REGULATIONS

On the 13th Day of JULY, 2010
During a period of time intervening between May 17, 2010 and September 22, 2010, at 315 W. Marlboro Drive, Chandler, Maricopa County, Arizona, the defendant did erect, construct, maintain and own an unlawful and unauthorized structure, to-wit: a fabric and pipe RV cover, on an interior lot in a single-family district with a rear yard less than ten (10) feet, a class 1 misdemeanor, in violation of Chandler City Code Sections 1-8, 35-703.4, 35-2300 and 35-2700, as amended.

COMPLAINT SIGNATURE

[Handwritten Signature]
CHANDLER CITY PROSECUTOR 9/22/10

Subscribed to and sworn before me this DATE: -----

JUDGE: -----

Officer: , -----

RECORD OF COURT PROCEEDINGS

I hereby waive my right to trial, enter a plea of guilty for the violation described in the complaint, and consent to judgment imposing the prescribed punishment.

DATE: ----- DEFENDANT SIGNATURE: -----

Defendant advised of legal rights. The following plea was entered:

GUILTY: _____ NOT GUILTY: _____ NO CONTEST: _____ DATE: _____

It is adjudged defendant is: -----

Sentence:
10-0056246 -----

Chandler Police Department

Incident Report

Report Date 04/05/2010 11:24

Report No. 09-13-2252

I N C I D E N T	**Report No.** 09-13-2252	**Report Date** 04/05/2010 11:24	Occurred From 11/16/2009 00:00	Occurred To 04/05/2010 11:24	**Report Type** Supplemental
	Incident Type NSU - Zoning Violation		**Case Status** Closed - Abated (NSU ONLY)	Case Status Date 04/05/2010	Cleared
	Common Name 315 W MARLBORO DR Chandler, AZ 85225				
	CAD Dispo : 05 **Grid** : B-15 Location Type : Residence-single Family District : 4		**Beat Assignment** : 7 Total Damaged Property Value : \$0.00 Total Stolen Property Value : \$0.00 Total Recovered Property Value : \$0.00		

O F F E N S E	Main Charge/Offense		(NSU) Action Taken Abated - Self Compliance
	City Violation 35-703 HEIGHT AND AREA REGULATIONS	Location Type Residence-single Family	(NSU) Reinspection Dat
	(NSU) Photos Taken (Y/N) : No (NSU) Inspection Type : Final Inspection		Structure Occupancy : Occupied

N A R R A T I V E	Topic of Narrative . SUPPLEMENTAL REPORT
	<p>On Monday, 5 April 2010, at about 1123 hrs Inspector Hammack found the structure has been removed brining the property now into compliance.</p> <p>Case closed.</p>

Reporting Officer/Employee Neigh. Specialist Larry Hammack (00A28)	Department	Report Status: Signed
Critical Supps Due From: Last Name and Badge		Date/Time
Final Review Supv ID Inf.	Department	Date / Time

09-13-2252

Incident Report

I N C I D E N T	**Report No.** 10-05-6246	**Report Date** 05/18/2010 10:28	Occurred From 05/17/2010 15:03	Occurred To	**Report Type** Original
	Incident Type NSU - Neighborhood Mtn Violation		**Case Status** Pending - To Case Officer	Case Status Date 05/18/2010	Cleared
	Common Name 315 W MARLBORO DR Chandler, AZ 85225 (Maricopa County) ~ 2037				
	CAD Dispo : 05		District : 4		
	Grid : B-15		**Beat Assignment** : 7		
Related Cases : 09-132252[NSU - Zoning Violation]			Total Damaged Property Value : \$0.00		
Location Type : Residence-single Family			Total Stolen Property Value : \$0.00		
District : 4			Total Recovered Property Value : \$0.00		

O F F E N S E	Main Charge/Offense		(NSU) Action Taken Other
	City Violation 35-703 HEIGHT AND AREA REGULATIONS	Location Type Residence-single Family	(NSU) Reinspection Dat 05/25/2010
	(NSU) Photos Taken (Y/N) : Yes (NSU) Inspection Type : Initial Inspection		Structure Occupancy : Occupied (NSU) Type of Action Taken : General Follow-up

P E R S O N 1	**Person Type** Owner Of Property	Business/Person Name David James Allshouse			Business Phone
	Home Phone (480) 497-4555	**Person Address** 315 W MARLBORO DR Chandler, AZ 85225-7195 , Maricopa County			Grid B-15
	Other Phone	Employer Address			Job Title
	Race White	**Sex** Male	SSN 353-50-8070	DL Exp. Date 03/18/2028	DL Number D01186978
	Birth Date 03/18/1963	Birth City			
	Age : 47 DL State : AZ DL Country : United States		Min. Height : 5'11" Min. Weight : 175 lbs Adult/Juvenile : Adult		

P E R S O N 2	**Person Type** Owner Of Property	Business/Person Name Candance Leigh Allshouse			Business Phone
	Home Phone (480) 497-4555	**Person Address** 315 W MARLBORO DR Chandler, AZ 85225-7195 , Maricopa County			Grid B-15
	Other Phone	Employer Address			Job Title
	Race White	**Sex** Female	SSN 370-50-9506	DL Exp. Date	DL Number
	Birth Date 03/04/1948	Birth City			
	Age : 62 Min. Height : 5'06"		Min. Weight : 130 lbs Adult/Juvenile : Adult		

Reporting Officer/Employee Neigh. Specialist Larry Hammack (00A28)	Department	Report Status: Signed
Critical Supps Due From: Last Name and Badge		Date/Time
Final Review Supv ID Inf.	Department	Date / Time

Incident Report

P E R S O N 3	**Person Type** Reporting Person		Business/Person Name Kim Smith			Business Phone	
	Home Phone (480) 892-0801		**Person Address** 312 W MISSION DR Chandler, AZ 85225 , Maricopa County			Grid B-15	
	Other Phone		Employer Address			Job Title	
	Race White		**Sex** Female	SSN		DL Exp. Date	DL Number
	Birth Date		Birth City				
	Adult/Juvenile : Adult						

P E R S O N 4	**Person Type** Reporting Person		Business/Person Name Chuck MAAS			Business Phone	
	Home Phone		**Person Address** 314 W MISSION DR Chandler, AZ 85225 , Maricopa County			Grid B-15	
	Other Phone		Employer Address			Job Title	
	Race White		**Sex** Male	SSN		DL Exp. Date	DL Number
	Birth Date		Birth City				
	Adult/Juvenile : Adult						

N A R R A T I V E 1	Topic of Narrative	ORIGINAL REPORT
<p>On Monday, 17 May 2010, at about 1503 hrs Senior Code Inspector Hammack received a telephone complaint from Ms Smith regarding a structure built again in the rear yard of 315 West Marlboro Drive after a zoning variance had been denied. See previous case #09-0132252. According to Ms Smith the structure this time is made of pipes with a fabric covering stretched to cover the frame.</p> <p>On Tuesday, 18 May 2010, at about 1052 hrs Senior Code Inspector responded to 315 West Marlboro Drive finding a structure as described. This structure is placed in the required ten (10') foot rear yard setback for property in a Single Family Residential Zone (SF-8.5) by Chandler City Code 35-703.4. Inspector Hammack photographed the structure to document the conditions at this time.</p> <p>A check of Maricopa County Assessors office records identified the property as parcel number 302-26-601 in the names of David J Allshouse and Candance Leigh Allshouse as of 31 July 1998.</p> <p>On Thursday, 20 May 2010, Inspector Hammack received an e-mail complaint regarding this structure from another area resident, Chuck Maas, who lives behind the property in question.</p> <p>On Thursday, 20 May 2010, at about 1546 hrs an unidentified female called Inspector Hammack leaving a voice message complaining of the structure built in the rear yard of 315 West Marlboro Drive.</p> <p>Case pending contact with Planning Department.</p>		

Reporting Officer/Employee Neigh. Specialist Larry Hammack (00A28)	Department	Report Status: Signed
Critical Supps Due From: Last Name and Badge		Date/Time
Final Review Supv ID Inf.	Department	Date / Time

Incident Report

I N C I D E N T	**Report No.** 10-05-6246	**Report Date** 06/10/2010 15:36	Occurred From 05/17/2010 15:03	Occurred To	**Report Type** Supplemental
	Incident Type NSU - Zoning Violation		**Case Status** Pending - To Case Officer	Case Status Date 06/10/2010	Cleared
	Common Name 315 W MARLBQRO DR Chandler, AZ 85225-2031 (Maricopa County)				
	CAD Dispo : 05 **Grid** : B-15 Location Type : Residence-single Family District : 4		**Beat Assignment** : 7 Total Damaged Property Value : \$0.00 Total Stolen Property Value : \$0.00 Total Recovered Property Value : \$0.00		

O F F E N S E 1	Main Charge/Offense		(NSU) Action Taken Personal Contact Warnin	
	City Violation 35-703 HEIGHT AND AREA REGULATIONS	Location Type Residence-single Family	(NSU) Reinspection Dat 06/17/2010	
	(NSU) Photos Taken (Y/N) : No (NSU) Inspection Type : Follow-up		Structure Occupancy : Occupied (NSU) Type of Action Taken : General Follow-up	

N A R R A T I V E 1	Topic of Narrative	SUPPLEMENTAL REPORT
	<p>On Thursday, 10 June 2010, at about 1529 hrs Inspector Hammack made telephone contact with Mr Allshouse regarding this investigation. Mr Allshouse stated that Chandler City Attorney Glenn Brockman had told him during the Board of Adjustment hearing for the previous structure that this design would not be a structure. It was agreed that a written opinion would be obtained from Mr Brockman before further action is taken.</p> <p>Case pending.</p>	

Reporting Officer/Employee Neigh. Specialist Larry Hammack (00A28)	Department	Report Status: Signed
Critical Supps Due From: Last Name and Badge		Date/Time
Final Review Supv ID Inf.	Department	Date / Time

Incident Report

I N C I D E N T	**Report No.** 10-05-6246	**Report Date** 07/01/2010 11:11	Occurred From 05/17/2010 15:03	Occurred To	**Report Type** Supplemental
	Incident Type NSU - Zoning Violation		**Case Status** Pending - To Case Officer	Case Status Date 07/01/2010	Cleared
	Common Name 315 W MARLBORO DR Chandler, AZ 85225 (Maricopa County)				
	CAD Dispo : 05		**Beat Assignment** : 7		
	Grid : B-15 Location Type : Residence-single Family District : 4		Total Damaged Property Value : \$0.00 Total Stolen Property Value : \$0.00 Total Recovered Property Value : \$0.00		

O F F E N S E 1	Main Charge/Offense		(NSU) Action Taken Personal Contact Warnin
	City Violation 35-703 HEIGHT AND AREA REGULATIONS	Location Type Residence-single Family	(NSU) Reinspection Dat 07/08/2010
	(NSU) Photos Taken (Y/N) : No (NSU) Inspection Type : Follow-up		Structure Occupancy : Occupied (NSU) Type of Action Taken : General Follow-up

N A R R A T I V E 1	Topic of Narrative SUPPLEMENTAL REPORT
	On Wednesday, 30 June 2010, Inspector Hammack received communications from Chandler City Attorney Glenn Brockman regarding this investigation. Mr Brockman stated he did not give Mr Allshouse permission to build this structure nor told him it would not be subject to Zoning Law requirements.
	At about 1118 hrs on Thursday, 1 July 2010, Inspector Hammack called the property owner, David Allshouse, leaving a voice message advising the structure does have to meet the zoning set back requirements by 8 July 2010. Case pending re-inspection.

Reporting Officer/Employee Neigh. Specialist Larry Hammack (00A28)	Department	Report Status: Signed
Critical Supps Due From: Last Name and Badge		Date/Time
Final Review Supv ID Inf.	Department	Date / Time

Incident Report

I N C I D E N T	**Report No.** 10-05-6246	**Report Date** 08/19/2010 09:20	Occurred From 05/17/2010 15:03	Occurred To 08/19/2010 09:20	**Report Type** Supplemental
	Incident Type NSU - Zoning Violation		**Case Status** Closed - City Complaint		Case Status Date 08/19/2010
	Common Name Allshouse residence - 315 W MARLBORO DR Chandler, AZ 85225-7195 (Maricopa County)				
	CAD Dispo : 05		**Beat Assignment** : 7		
	Grid : B-15		Total Damaged Property Value : \$0.00		
Location Type : Residence-single Family			Total Stolen Property Value : \$0.00		
District : 4			Total Recovered Property Value : \$0.00		

O F F E N S E	Main Charge/Offense		(NSU) Action Taken Other
	City Violation 35-703 HEIGHT AND AREA REGULATIONS	Location Type Residence-single Family	(NSU) Reinspection Dat
	(NSU) Photos Taken (Y/N) : No (NSU) Inspection Type : Final Inspection		Structure Occupancy : Occupied (NSU) Type of Action Taken : General Follow-up

N A R R A T I V E	Topic of Narrative SUPPLEMENTAL REPORT
	<p>On Tuesday, 13 July 2010, at about 1037 hrs Inspector Hammack re-inspected the property finding no change in the structure to bring the property into compliance. Inspector Hammack again photographed the property from the public right of way to document the conditions at that time.</p> <p>This case is now being submitted to the prosecutors office for review and charging.</p>

Reporting Officer/Employee Neigh. Specialist Larry Hammack (00A28)	Department	Report Status: Signed
Critical Supps Due From: Last Name and Badge		Date/Time
Final Review Supv ID Inf.	Department	Date / Time

Request for Extension on Variance Hearing

Karl T. Scholes

to:

william.dermody

02/25/2011 04:58 PM

Show Details

Dear William,

I represent David and Candace Allshouse on the variance request referenced in the letter attached to this email. I write to request an extension of the meeting date on the variance. Mr. Allshouse will not be available to attend the meeting on March 9, 2011 at 6:00 p.m. Mr. Allshouse's work requires him to travel often, and he will be out of the state on March 9, 2011. He will not be able to attend the meeting. As it will be necessary to have him present, we request an extension until the April 13, 2011 hearing date.

Let me know if you are able to arrange this extension, and if you have any further questions.

Cordially,

Karl T. Scholes

Bueler Jones LLP
1300 N. McClintock Drive Suite B-4
Chandler, Arizona 85226

Phone 480.775.6400
Fax 480.775.8868

The information contained in this e-mail is attorney privileged and confidential. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If this communication has been received in error, please notify us by phone or an e-mail response. Thank you.

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.

35-2502. Appeal procedure.

(1) Appeals to the Board may be taken by any person aggrieved or by Officials, Departments, Boards or Divisions of the City affected by any decision of the Zoning Administrator, within thirty (30) days, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal is taken shall forthwith transmit to the Board all papers constituting the records upon which the action appealed from was taken.

(2) The appeal stays all proceedings in the matter appealed from, unless the officer from whom the appeal is taken certified to the Board that, by reason of the facts stated in the certificate a stay would, in his/her opinion, cause eminent peril to life or property. In such case, proceedings shall not be stayed except by restraining order granted by the Board or by a court of record on application and notice to the officer from whom the appeal is taken.

(3) The Board shall fix a reasonable time for the hearing of the appeal and given notice thereof to the parties in interest and the public in the same manner used for amending this Code and stated in Article XXVI.

(4) The Board's decision shall become effective on the sixth working day after the Board's hearing on the appeal.

(5) A person aggrieved by decision of the Board or a taxpayer, officer or department of the municipality affected by a decision of the Board may, at any time within thirty (30) days after the Board has rendered its decision, file a complaint for special action in the superior court to review the Board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed; but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.