



MEMORANDUM Transportation & Development – BA Memo No. 11-017

DATE: DECEMBER 29, 2011
TO: BOARD OF ADJUSTMENT
THRU: R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
 JEFF KURTZ, PLANNING ADMINISTRATOR *JK*
 KEVIN MAYO, PLANNING MANAGER *KM*
FROM: BILL DERMODY, SENIOR CITY PLANNER *BD*
SUBJECT: VAR11-0010 PETTIT RESIDENCE

Request: Variance from the Zoning Ordinance to allow a ramada structure to encroach into the minimum setbacks from the rear property line and the house

Applicant: Craig Pettit

Location: 2315 E. Browning Place, south and east of Pecos and Cooper Roads

Existing Use: Single-Family Home

Zoning: Planned Area Development (PAD)

RECOMMENDATION

Staff, upon finding the need for a variance to be self-imposed and the criteria by which all variances are reviewed to not be satisfied, recommends denial of the requested variance.

BACKGROUND

The application requests a variance from the zoning requirements to allow a ramada structure to encroach 3’ into the minimum 5’ setbacks from both the house and the rear property line, leaving 2’ setbacks in both directions. Also, the application requests relief from the Zoning Code definition of an “open-air ramada” in order to exceed 150 square feet in size. The requested ramada is approximately 154 square feet (14’ x 11’) as measured under the shade cover.

Alternatively, the ramada structure could be considered an "accessory building" as it normally would be by the Zoning Code due to its size. As an "accessory building", the requested variance would be an encroachment of 7' into the minimum 10' rear yard setback. The Zoning Code does not require an "accessory building" be separated from the house by any minimum distance.

Staff notes that setbacks are measured differently for an "open-air ramada" versus an "accessory building". For an "open-air ramada", setbacks are measured to the edge of the overhang. For an "accessory building", setbacks are measured to the posts, so long as the overhang is 2' or less. Staff estimates the structure's overhangs (beyond the columns) are approximately 2' toward both the rear property line and the house. The application does not account for these overhangs in either the site plan or justification for variance.

The property, which contains a single-family home, is located in the Pecos Aldea subdivision zoned PAD. The subdivision's lots range from approximately 4,900 to 9,400 square feet in size, with most lots between 5,300 and 6,200 square feet. The subject lot is mostly rectangular, except that the front property line follows the street's curve. The typically sized and shaped lot of 5,340 square feet contains a 1,537 (livable) square foot house built in 1996.

The rear property line jogs in an irregular fashion around the subject property and its neighbor to the east, which serves to give the subject property a somewhat small rear yard of 18' in depth (from house to property line wall). Most rear yards in the subdivision are between approximately 24' and 44' in depth, though there are a few others (including the neighbor immediately south) with rear yards of only 18'.

The ramada is partially constructed and has not received building permits. Building permits will be required if a variance is granted. The applicant stopped construction of the ramada upon receiving a warning notice from Code Enforcement in November.

CODE REQUIREMENTS

The definition of an "open-air ramada", minimum setbacks for an "open-air ramada", and minimum setbacks for accessory buildings are established by the Zoning Code:

35-200. Definitions.

Open-air ramada: A detached accessory building or structure open on the sides and supporting a roof or lattice-type cover, primarily for the purpose of providing shade in conjunction with a recreational activity, such as a swimming pool, Jacuzzi, or sitting area, and not to exceed both ten (10) feet in height and one hundred fifty (150) square feet in area, and separated from the residential dwelling by a distance equal to at least one-half (1/2) of the rear yard setback.

The requested ramada is approximately 154 square feet in size. Since the normal rear yard setback for the subdivision is 10', the ramada (if considered an "open-air ramada" by code) would have to be separated from the house by 5' (one-half the minimum rear yard setback).

35-2202. Accessory buildings.

(2) Accessory buildings shall meet the minimum side and rear yard setbacks for the district in which it is located, except that open-air ramadas as defined by this Code [in section 200] may achieve a minimum five-foot side yard and five-foot rear yard setback, as measured from the edge of the roof or cover. In the event that an alley, or common open space public or private other than a street, adjoins the rear yard along one (1) or more of the property lines, the required five-foot setback from that property line to such ramada may be eliminated.

35-1706. Description of preliminary development plan (to accompany a PAD).

(5) If the City Council approves the PAD zoning designation, the Official Zoning Map shall be so changed by ordinance. The Council may, as necessary, attach conditions to the PAD approval, which may include but are not limited to the following:

(d) Setback and height of buildings.

According to the development representation and Council approved conditions, the minimum rear yard setback for accessory buildings is 10'.

FINDINGS

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

- 1. Explain the special circumstances or conditions that apply to the land, building, or use referred to in the application. The special circumstances cannot be self-imposed by the property owner.**

The 5,340 square foot lot is a typical size and shape for the neighborhood. Though the back yard is somewhat small, there are other lots nearby in a similar situation. There are no special circumstances that apply to the property which do not apply equally to other properties in the neighborhood. Staff is of the opinion that this criterion has not been satisfied.

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

The existing house demonstrates that the property has been allowed to develop and the property owners have enjoyed substantial property rights on land zoned for single-family homes since 1996. It is not a property right to build a ramada structure that violates minimum setbacks. Trees could provide adequate shade in the same area. 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 ramada structures that do not abide by zoning regulations. 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.

One neighbor has contacted Staff in opposition to the request and plans to attend the Board of Adjustment meeting.

SUMMARY

Staff does not support this request. There are no special circumstances applicable to this property that do not apply equally to similar properties in the surrounding area. The requirements to meet minimum setbacks or to not meet the Zoning Code definition for an "open-air ramada" are not hardships for this property. The property has been substantially developed since the home's original construction in 1996.

Granting a variance for this property would, in Staff's opinion, constitute a special privilege inconsistent with the limitations placed upon other similar properties. There are no unique conditions to this location that would support a finding in favor of this application.

RECOMMENDED ACTION

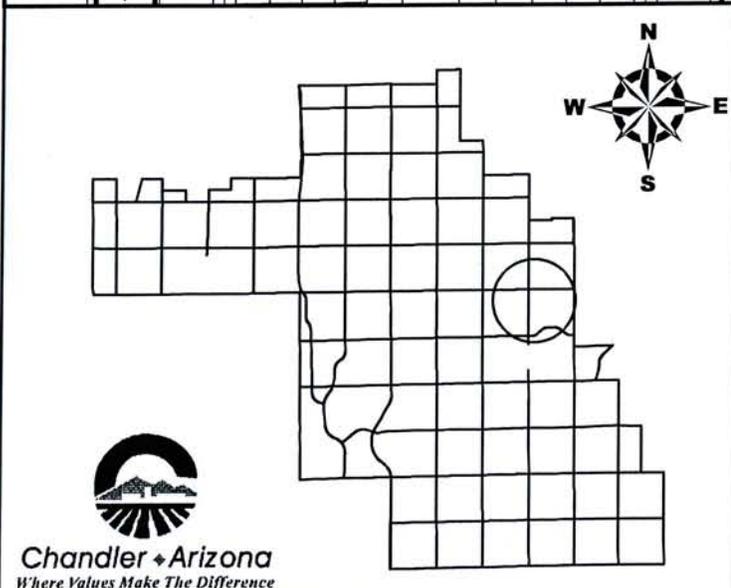
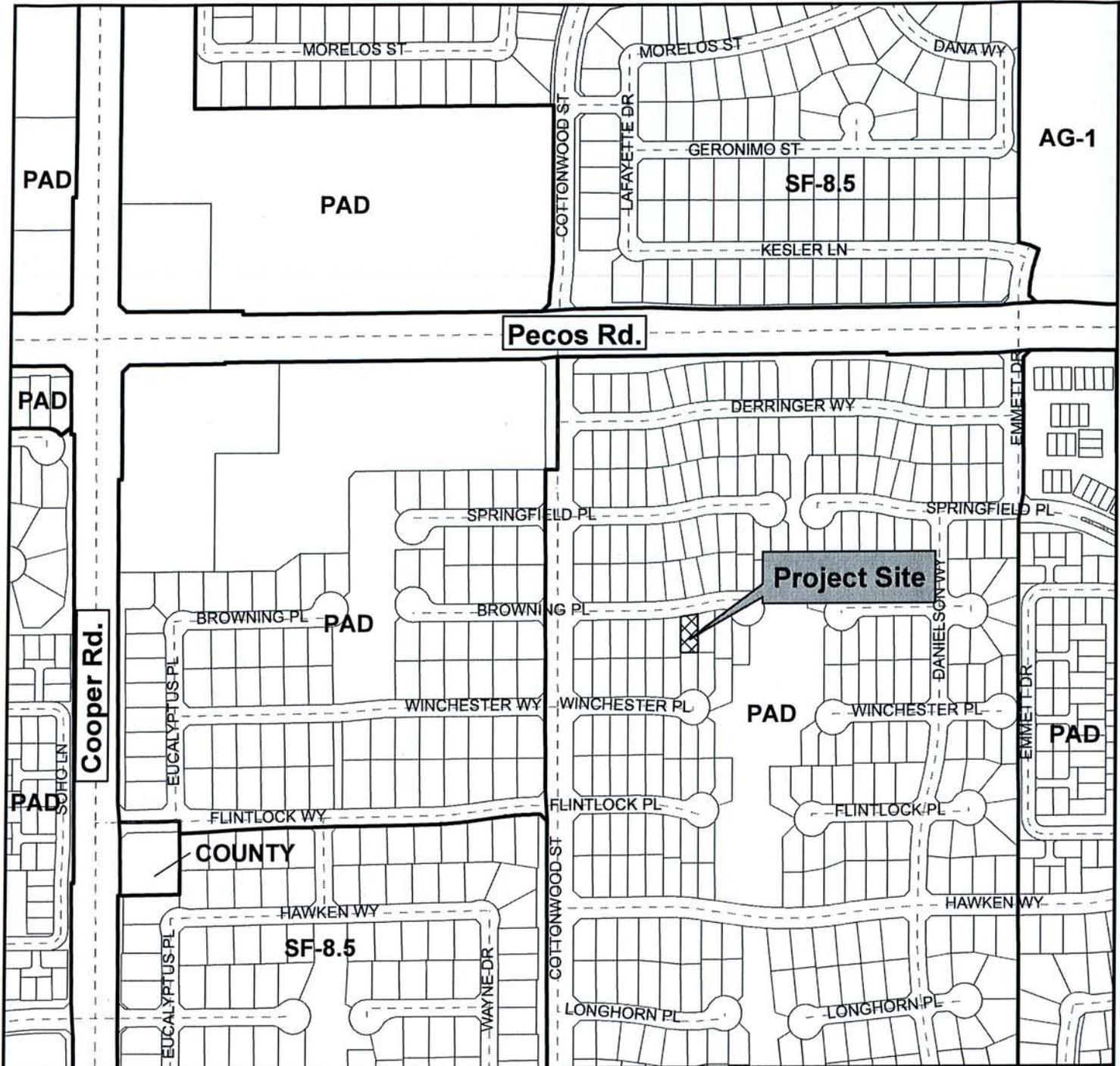
Staff recommends denial of this request.

PROPOSED MOTION

Move to deny variance request VAR11-0010 PETTIT RESIDENCE, as recommended by Staff.

Attachments

1. Vicinity Maps
2. Site Plan
3. Application and Justification
4. Applicant's Photos
5. Powers and Duties



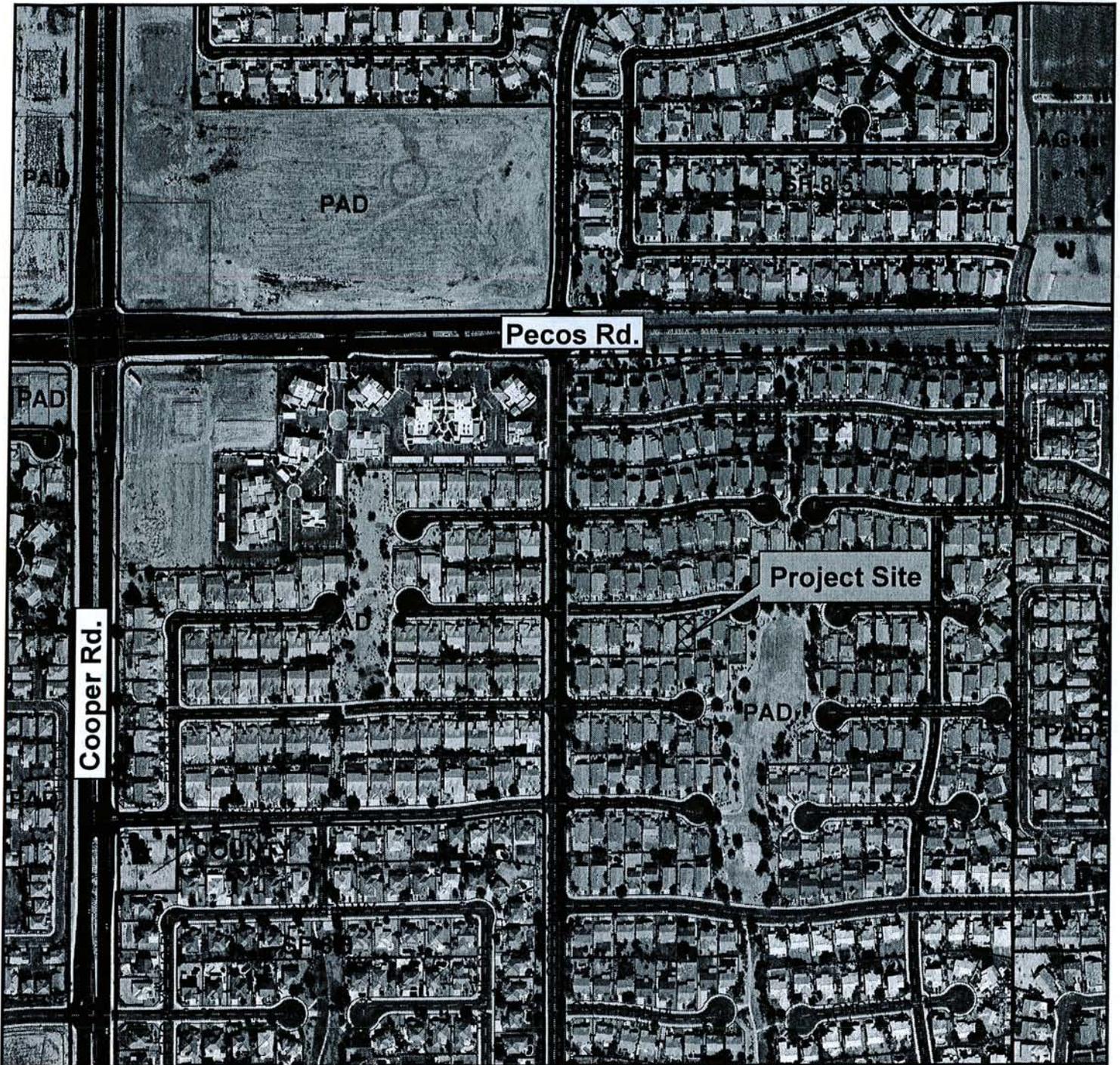
Vicinity Map

 **VAR11-0010**

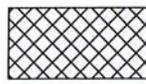
Pettit Residence
2315 E. Browning Pl.

Chandler + Arizona
Where Values Make The Difference

CITY OF CHANDLER 11/23/2011



Vicinity Map



VAR11-0010

**Pettit Residence
2315 E. Browning Pl.**



Chandler - Arizona
Where Values Make The Difference



Variance Request Application

If the property owner is not filing the application, please fill out the attached Letter of Authorization for an applicant or project representative to file the application.

Project or Owner Name <i>CRAG PETTIT</i>		
Property Location/Address <i>2315 E BROWNING Place</i>		City, State, Zip Code <i>Chandler, Az 85286</i>
Type of Variance (waiver) from the Zoning Code you are requesting: <i>5' setback from I would request the 5' setback be allowed to be a 4' setback from the house and rear wall specifically for the pergola (north and south setbacks in REAR yard). East and West setbacks in rear yard already comply.</i>		
Is this variance for an existing structure (e.g. fence, pool, etc.)? Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>		
Has the City issued a Notice of Violation? Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/> If yes, please attach a copy of the notice/letter.		
Property Owner Name <i>Craig Pettit</i>		
Mailing Address <i>2315 E Browning Place</i>		Phone Number <i>602-349-3400 (cell)</i>
City, State, Zip Code <i>Chandler Az 85286</i>		Fax Number
Applicant/Representative Name <i>SAME AS ABOVE</i>		
Mailing Address		Phone Number
City, State, Zip Code		Fax Number
Property Owner or Representative Signature <i>[Signature]</i>		Date <i>11/18/11</i>
For City Use		
Date Filed <i>11/18/11</i>	Development No. <i>VAR-11-0010</i>	Planner

Mailing Address:
P.O. Box 4008, MS 401
Chandler, Arizona 85244-4008

Transportation and Development Department
Planning Division
215 E. Buffalo St., Chandler Arizona 85225

Telephone: (480) 782-3000
Fax: (480) 782-3010
www.chandleraz.gov
Form No: UDM-063/Planning
Rev: 6-6-11



Chandler • Arizona
Where Values Make The Difference

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.

* PLEASE SEE ATTACHED WORD DOCUMENT WITH TYPED
ANSWERS FOR QUESTIONS 1-3.

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

- 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.

My yard is only 18 feet from the rear of the house to the back wall. The wall in the rear of the house is built higher than the 6 foot standard wall (it was built this way by the builder in 1996). I have a substantially smaller yard than any of my neighbors depth wise which greatly limits my options in wanting to improve my property, and in turn, my property value within the City of Chandler. The proposed pergola is 10' in depth (110 square feet overall, considered a small pergola per Bill Dermody at planning, and does not require a permit) leaving only 4 feet for a setback from both the house and rear wall, 1' shorter than the established 5' listed. This size pergola leaves just enough space for a standard 4' x 4' table, 2' for chairs on each side and enough minimal room to walk in the area (the concrete pad has already been laid and paid for). With a distance of only 18 feet, taking into consideration the setbacks, there is not enough room to construct any type of shade structure for my three children or pets to enjoy my yard and therefore affecting my ability to use or enjoy my property.

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

Again, the small size of the property greatly limits the options to enhancing and improving my property to not only raise property value for me, but my neighbors. Anyone living in AZ knows the challenges the heat brings, and in the summer time a shade structure is almost necessary to use and/or enjoy a backyard. The only way for this to fit in the yard is to have the pergola where it is. I have already spent \$150.00 for landscaping to scrape the yard and level it, \$540.00 for natural gas lines to be run from the house for the grill and fire bowl area, \$1750.00 for concrete (walkway, pergola pad, grill pad and two step areas) and \$800.00 in lumber to build the pergola. At present, the pergola is roughly 80% built, however, I ceased construction due to receiving notice of the necessity to submit a variance. I have three children and animals, and a shade structure is an absolute necessity in trying to enjoy my property. Without this, the backyard is completely useless during the summer months therefore completely limiting my rights as a property owner. The pergola is also NOT a permanent structure and easily removed if an unforeseen zoning or encroachment issue arises that necessitates it.

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

The pergola is being professionally built to contractor standards and will be sealed and painted to match the colors of the house (including trim). The main beams match the beam lines of the house, and the top beams are level with the roof line of the house making the flush, painted construction look feel as though it is an addition and not a separate structure. Adding an eating area, gas grill and fire feature opens up the options in an otherwise small yard adding monetary value to the property, and in turn, the neighborhood within the City. The property to my southwest (within view of my yard) already has one of these structures in the yard, and many other yards in the neighborhood have similar structures (large play structures, large gazebos and shade structures – both store bought and built like the one I am proposing, sheds and other storage facilities). As it stands now, the pergola or it's overhang do not encroach on anyone's property or their rights to enjoy theirs.

The addition of this pergola does not pose a detriment to ANYONE as the structure does not block anyone's view of anything, does not come close to encroaching on anyone's property lines, and does not hamper the ability of ANYONE to use or enjoy their property. Provided the pergola was set back to the 5' setback, the view and placement would essentially remain exactly where it is now, just one foot back. The one foot of difference now or then has no material effect to anyone's rights, views, or abilities to use their yard except for mine. The only thing that this project will do is improve my property value and hopefully encourage properties around me to do the same. I am the original owner of the property (home was built in 1996) and have been a Chandler taxpaying resident since 1996. This variance will only help me to enjoy the property and keep me in the City of Chandler for years to come as I am able to use and enjoy my backyard as I should, and not walk away from my property as so many Chandler residents have.



City of Chandler, Maricopa County, State of Arizona
Neighborhood Resources
Code Enforcement
Warning Notice

This notice is not a ticket or citation.

Occurred	Date observed (Mo/Day/Yr) 11-08-11	Time of day 2:45	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	<input type="checkbox"/> OV <input checked="" type="checkbox"/> C	Case Number 11-11-5281
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Location	Address 2315 E. Browning Pl.	City Chandler	State Arizona	Zipcode
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Responsible Party	Name <input type="checkbox"/> Unknown	Type <input type="checkbox"/> Owner <input type="checkbox"/> Renter <input type="checkbox"/> Manager <input type="checkbox"/> Employee	Phone
	Address	City	State Zipcode

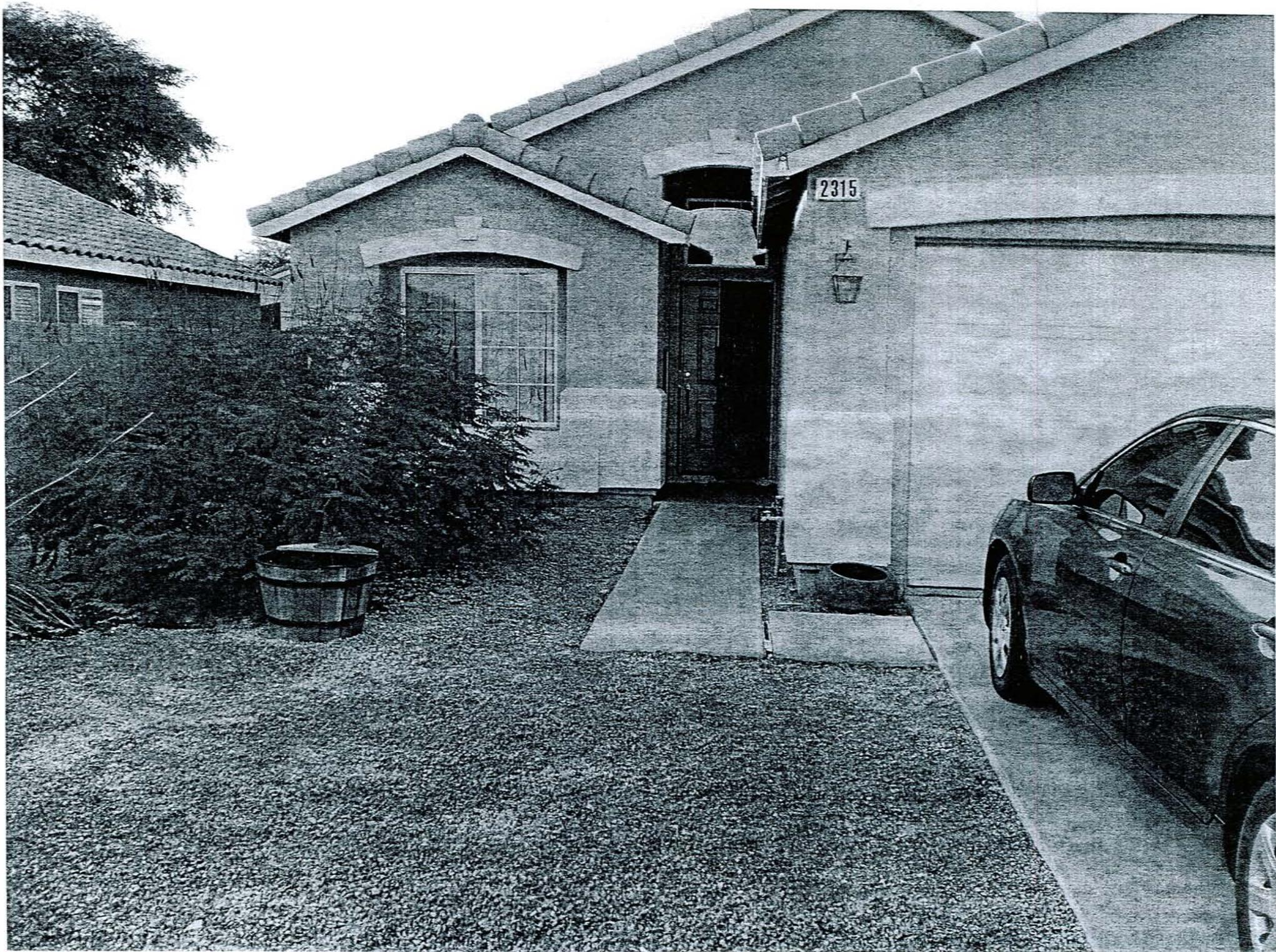
The City of Chandler needs the help of each citizen to maintain it as the community in which we are all proud to live. We request your cooperation by keeping your property, alley, or adjoining right-of-way clean and safe. To help us in this effort, please note the following item(s) that need your attention.

Violation and corrective action needed			
Chapter 35	Section 304	CORRECTIVE ACTION PLAN OPTION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Description of violation STRUCTURE BUILT IN REAR YARD VIOLATING SET BACKS 10' SETBACK REQUIRED
Specific Location <input type="checkbox"/> Front Yard <input type="checkbox"/> Side Yard <input checked="" type="checkbox"/> Rear Yard <input type="checkbox"/> Alley <input type="checkbox"/> Other:			
How to resolve REMOVE, REDUCE, RELOCATE OBTAIN BUILDING PERMIT			
Chapter	Section	CORRECTIVE ACTION PLAN OPTION <input type="checkbox"/> YES <input type="checkbox"/> NO	Description of violation
Specific Location <input type="checkbox"/> Front Yard <input type="checkbox"/> Side Yard <input type="checkbox"/> Rear Yard <input type="checkbox"/> Alley <input type="checkbox"/> Other:			
How to resolve			
Chapter	Section	CORRECTIVE ACTION PLAN OPTION <input type="checkbox"/> YES <input type="checkbox"/> NO	Description of violation
Specific Location <input type="checkbox"/> Front Yard <input type="checkbox"/> Side Yard <input type="checkbox"/> Rear Yard <input type="checkbox"/> Alley <input type="checkbox"/> Other:			
How to resolve			

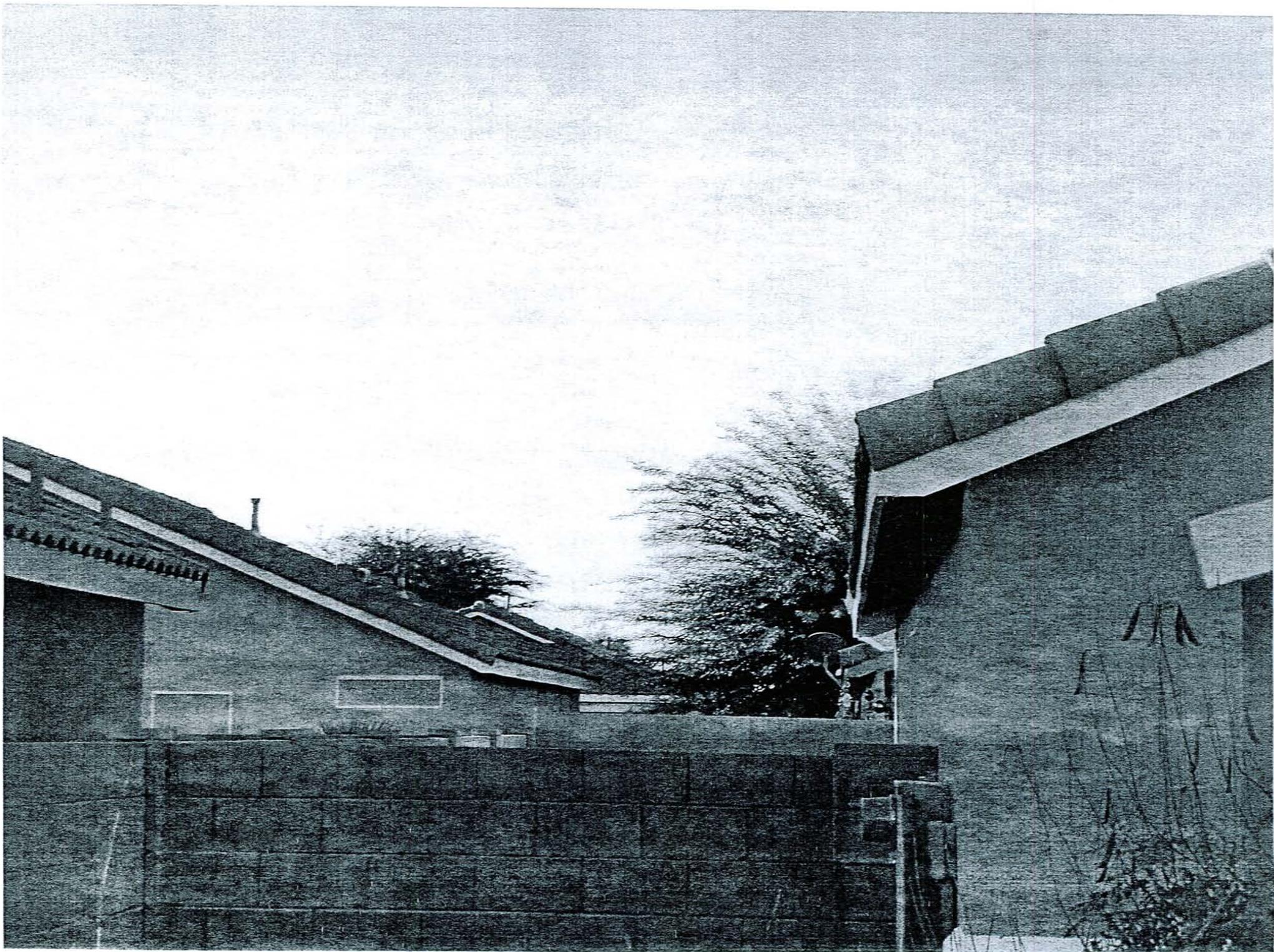
Please correct these item(s) by 11-15-11. The City will re-inspect this property to insure compliance. **This notice is not a ticket or citation.** However, should the problem(s) still exist upon re-inspection, a notice or citation will be issued that may result in municipal court action. If you are unable to correct a specific problem by the date listed, you may request a "Corrective Action Plan" by calling (480) 782-4320 or logging on to www.chandleraz.gov/code where the form is available. A "Corrective Action Plan" gives you additional time to correct the problem.

If you have any questions or desire additional information, you may contact the Code Enforcement Inspector. You can call Monday through Friday, between 8:00 A.M and 5:00 P.M. Leave a message if the inspector is not available. **We appreciate your cooperation in this matter.**

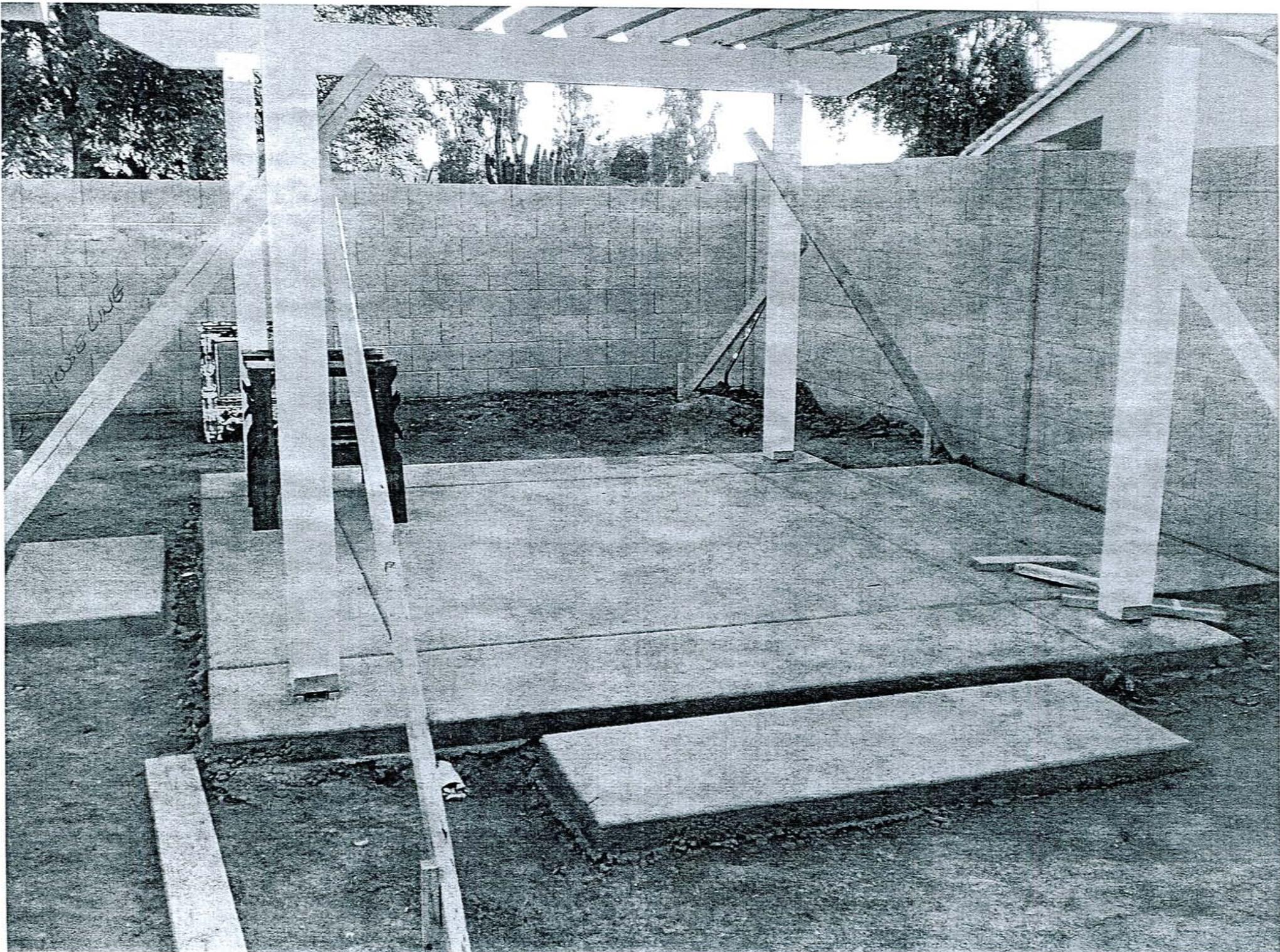
Inspector 	ID Number	Phone Number (480) 782 - 4329
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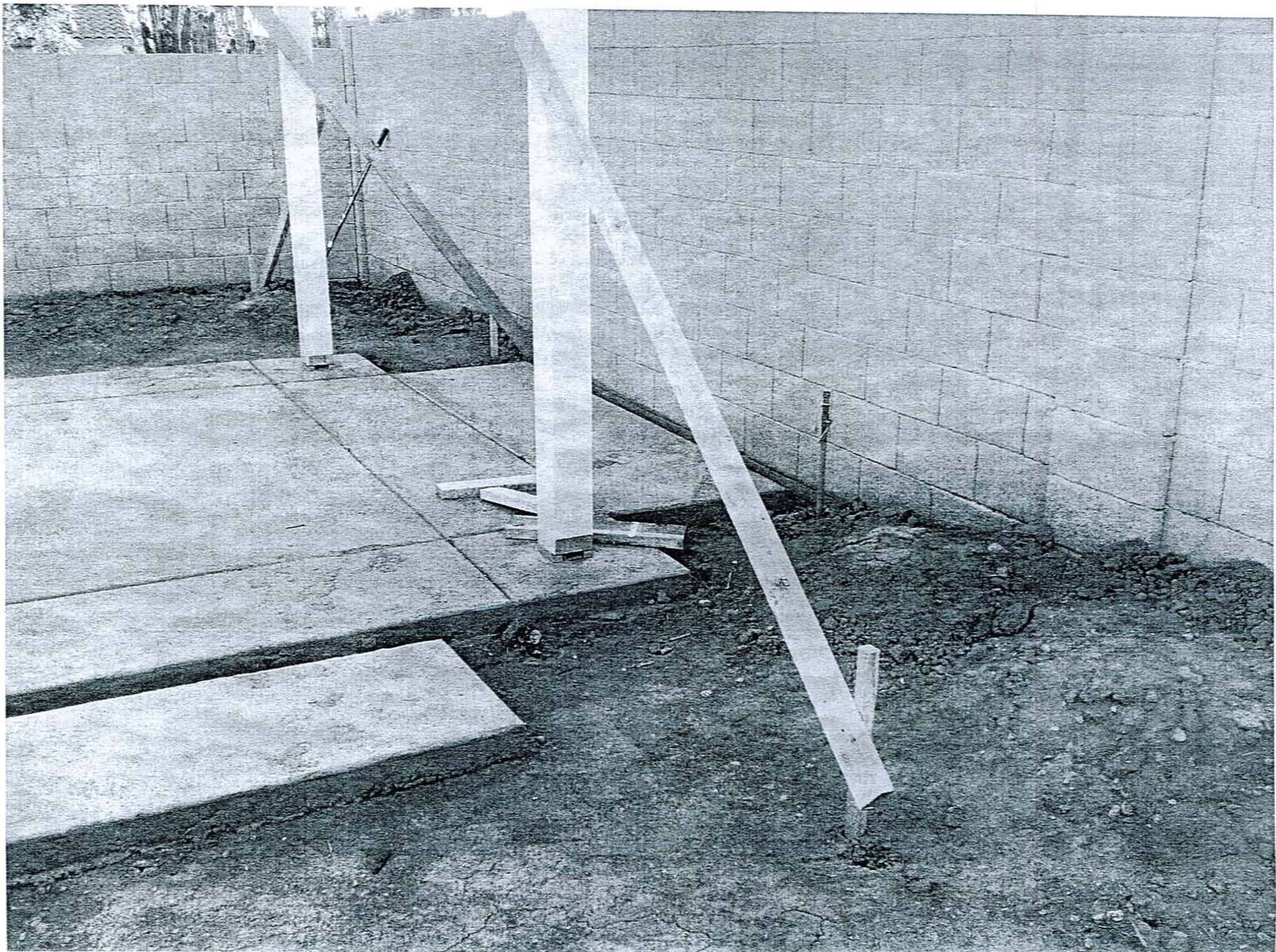
EP. - 11/11/17 from SINGWALK

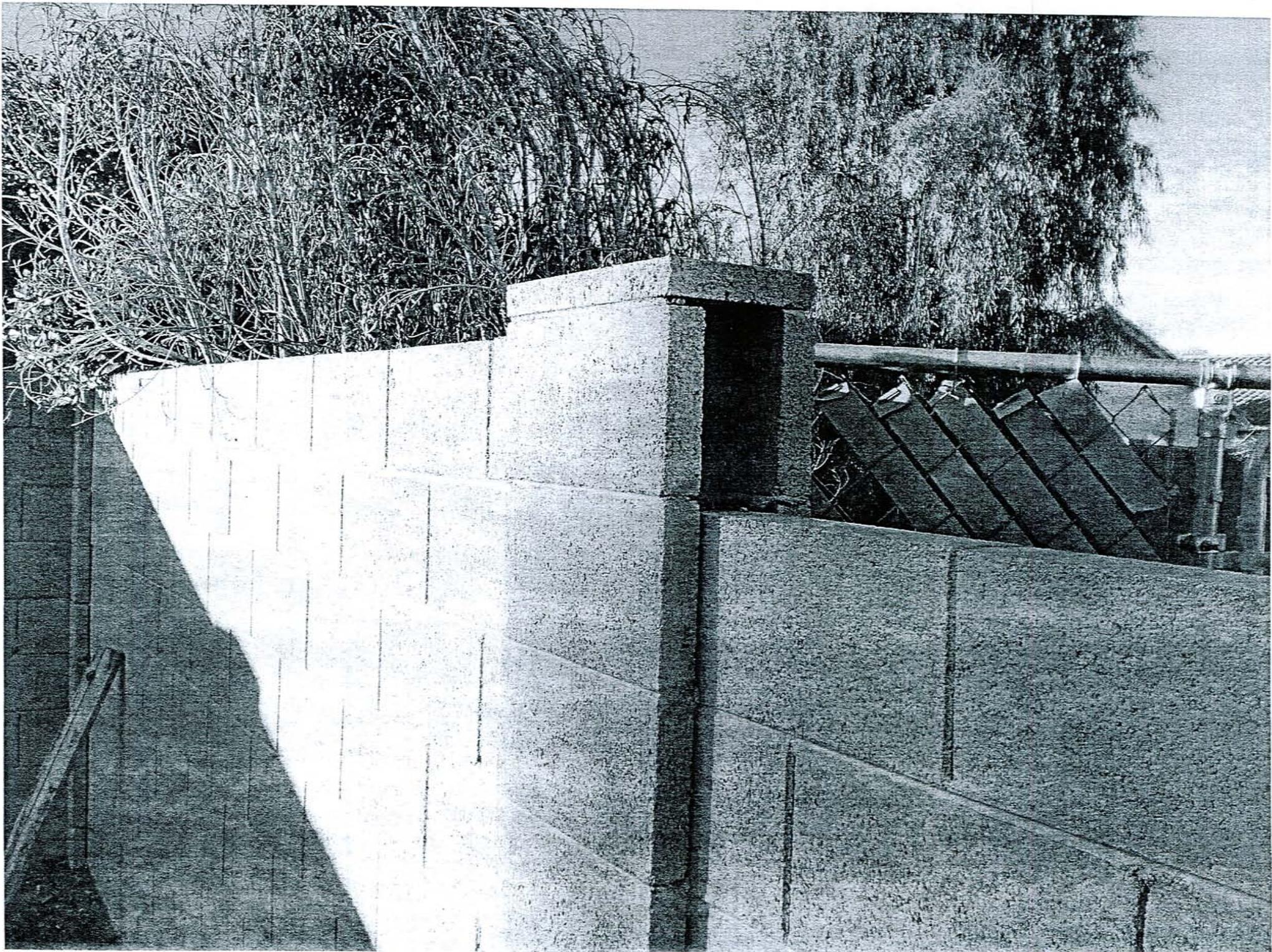


Another view south from front yard - NO VIEW OF BELGIAN FROM FRONT

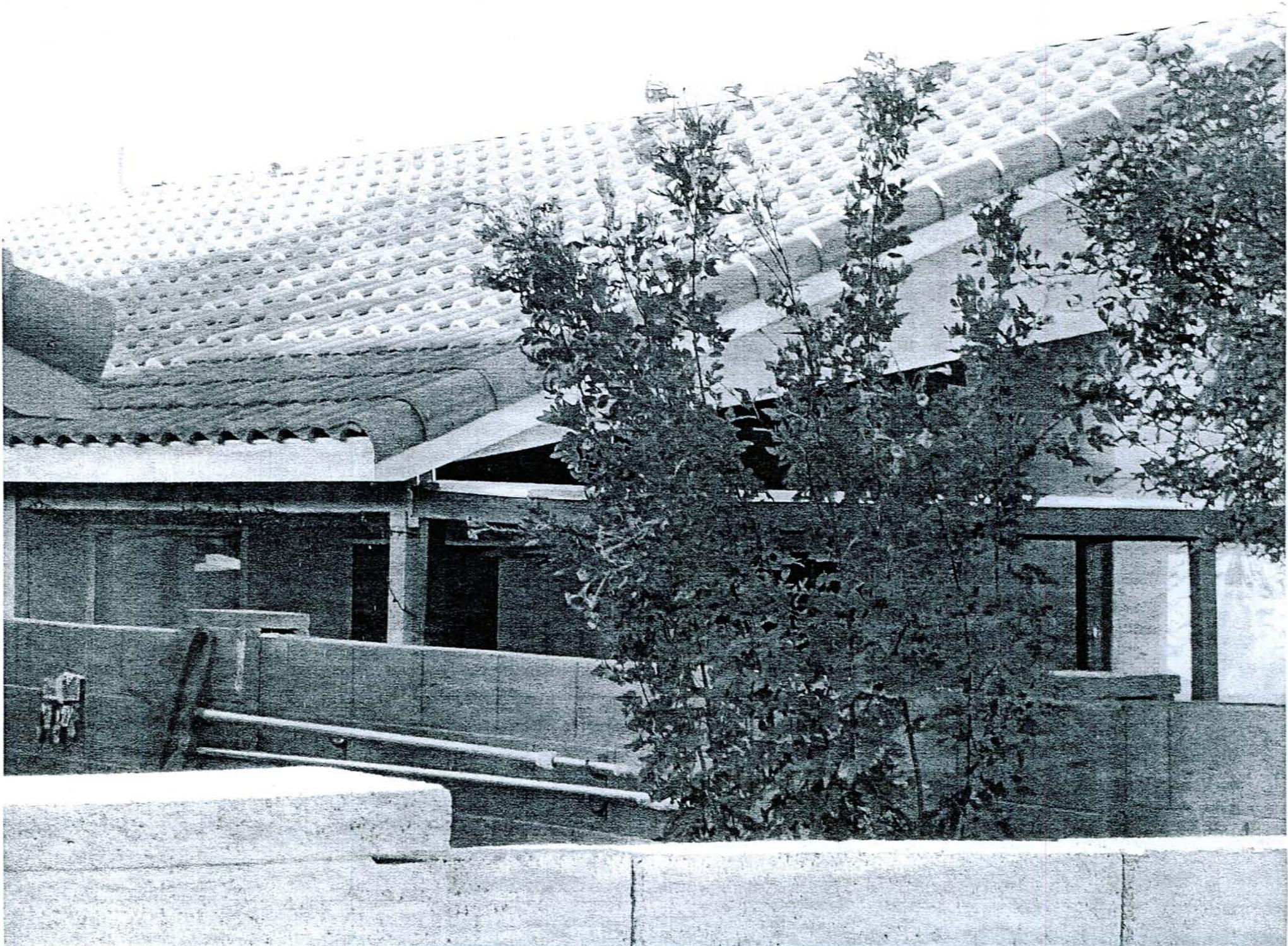


CONSTRUCTION ALREADY COMPLETED

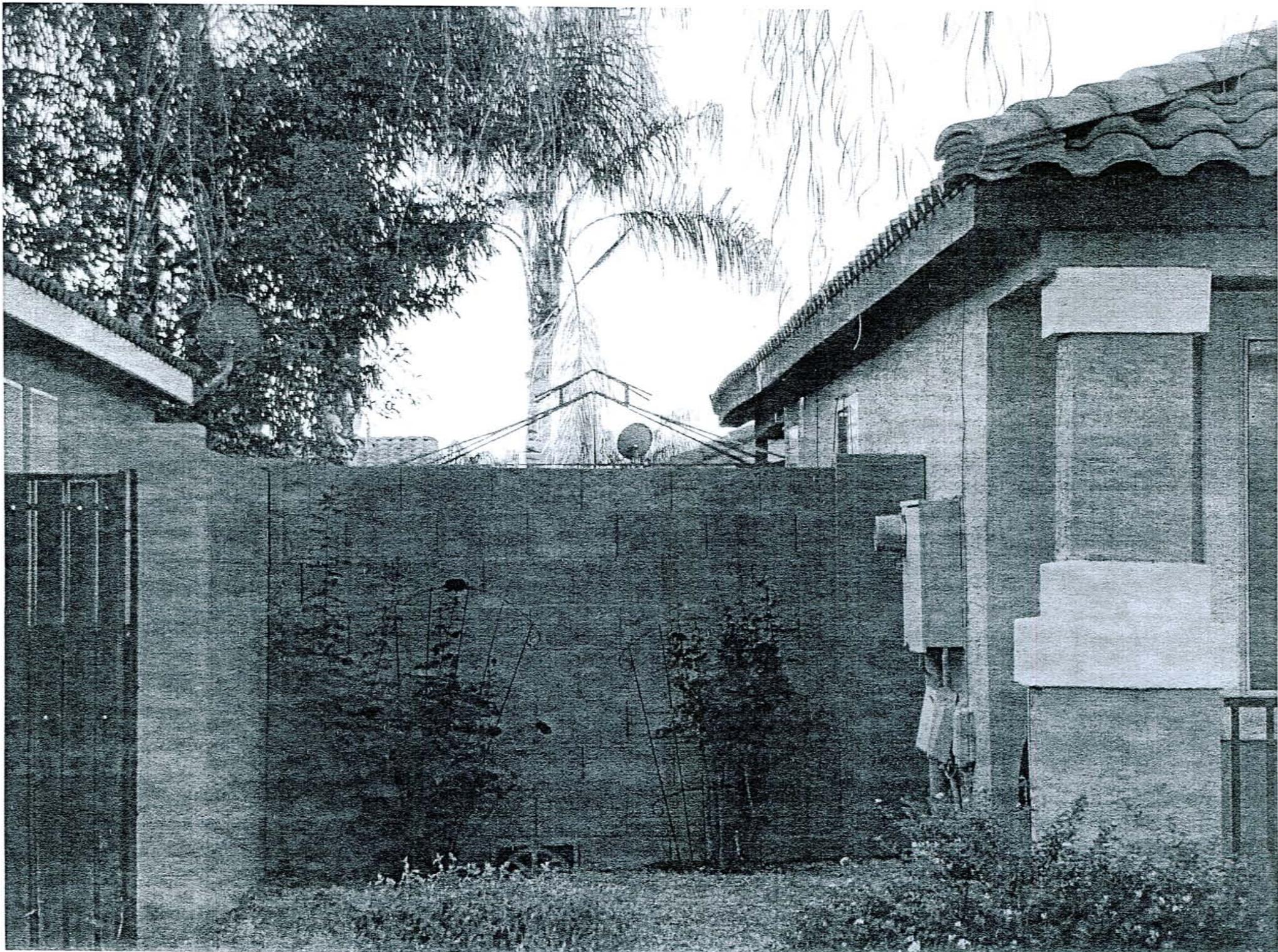




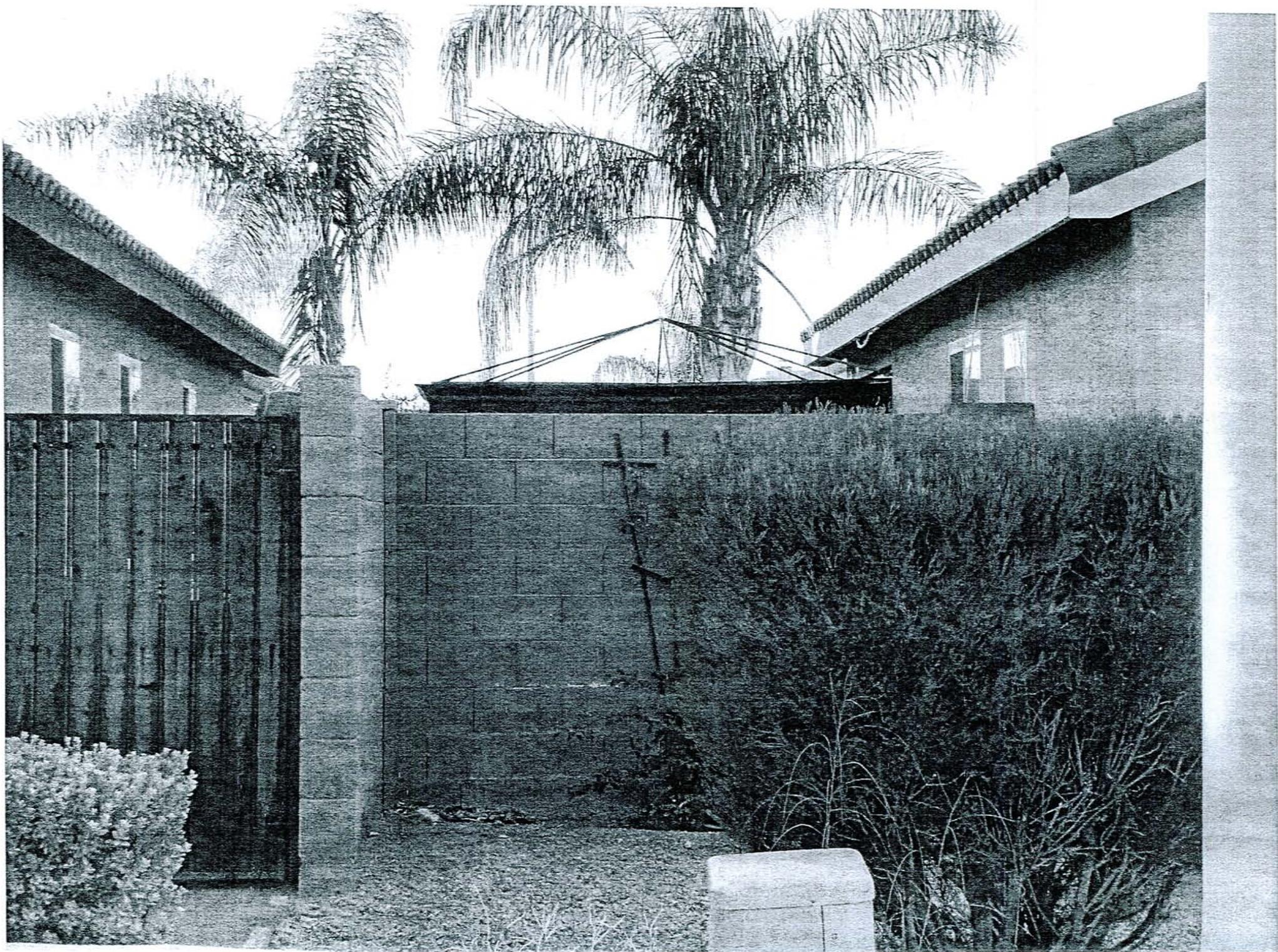
THIS SHOULD BE THE CORRECT HEIGHT AND NOT AS HIGH AS THIS IS THE HEIGHT



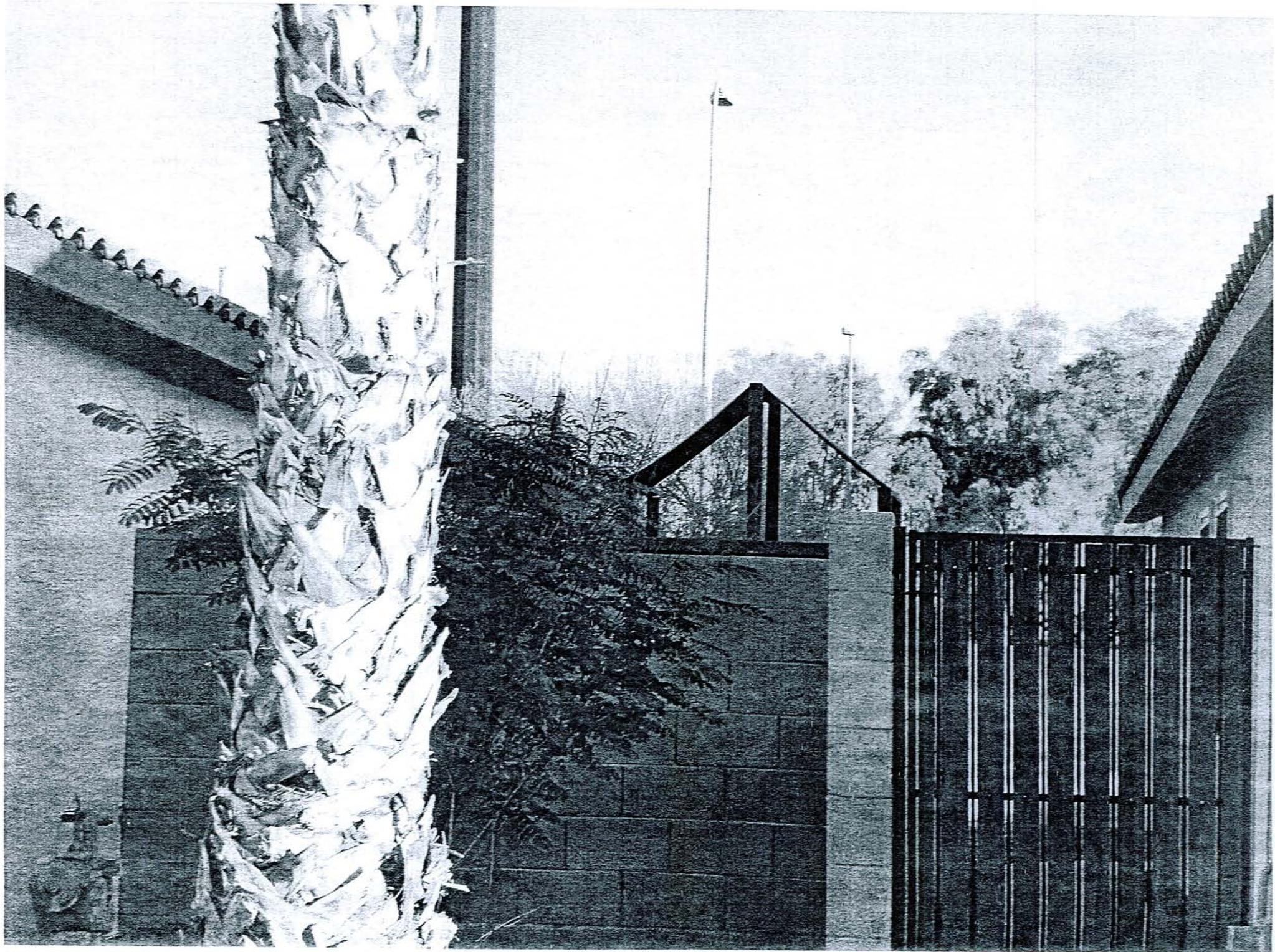
View from my YARD of houses to my side with covered structure in yard / ALSO IN PICO AREA



Alameda estreita situada na cerca da casa nº 111



INTERIOR COURTARDS LOCATED IN OCEAN MESA UNIT 71 B1A1



BRIDGE STRUCTURE LOCATED IN DENVER AREA WITH VI PLANT

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.