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DEC - 9 2009



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

Planning and Development – BA Memo No. 09-016

DATE: NOVEMBER 30, 2009

TO: BOARD OF ADJUSTMENT

THRU: PATRICK MCDERMOTT, ASSISTANT CITY MANAGER
JEFF KURTZ, ASSISTANT PLANNING AND DEVELOPMENT DIRECTOR
KEVIN MAYO, ACTING PLANNING MANAGER

FROM: BILL DERMODY, SENIOR CITY PLANNER

SUBJECT: VAR09-1004 WISNOWSKI RESIDENCE

Requests: Variance from the Zoning Ordinance to exceed the maximum number of accessory structures, to allow a structure to be considered an open-air ramada despite its size greater than 150 square feet, and to allow up to two open-air ramadas to encroach into the minimum separation distance from the principal building

Applicant: Roger A. Plate

Location: 2412 W. Galveston Street, approximately ½ mile west of Dobson Road

Property Owners: Tom Wisnowski

Existing Use: Single-Family Home

Zoning: Single-Family District (SF-33)

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 property, which contains a single-family home, is part of the Central Ridge Estates subdivision on the north side of Galveston Street. The subdivision contains lots ranging from

approximately 33,000 to 39,000 square feet, with the six lots fronting Galveston Street each at about 33,000 to 33,500 square feet. A 16'-wide alley runs behind the subject property. The lot north of the property, beyond the alley, is vacant. The rectangular, 33,363 square foot property is a typical size and shape for the subdivision and contains a 3,482 square foot house built in 1985.

The application requests a variance from the zoning requirements to allow a variety of structures to remain in the rear yard, including:

- Cabana
- Shade structure over a Jacuzzi
- Outdoor kitchen/bar
- 4-car garage

Of the structures listed above, only the garage appears to have received proper building permit approval. The structures were reportedly built by a renter who no longer occupies the premises.

The property also has two structures that abide by zoning requirements: the principal house and a 100 square foot storage shed. There are a pool and a jacuzzi in the rear yard, as well. A small storage shed, labeled "H" on the site plan, a guest house, labeled "G" on the site plan, and an RV shade structure visible east of the garage on the aerial photo have recently been removed and are not intended to be rebuilt.

One part of the variance request is to exceed the number of allowed accessory structures on the site. While only one accessory structure is allowed, there are currently four in the rear yard: the cabana, the Jacuzzi shade structure, the outdoor kitchen/bar, and the garage. The cabana, though under 150 square feet in size, does not qualify as an "open-air ramada" because of its failure to be separated from the house by 20' (1/2 the minimum rear yard setback of 40'). The Jacuzzi shade does not meet the code definition for an "open-air ramada" because of its size in excess of 150 square feet (it is 200 square feet) and its failure to be separated from the house by 20'. The outdoor kitchen/bar, though it is very close to the house (less than 6"), is not connected to the house and is therefore considered to be an accessory structure. The garage building is clearly an accessory structure.

The second part of the variance is to allow the 200 square foot Jacuzzi shade structure to be considered an "open-air ramada" despite its size in excess of 150 square feet and its failure to be separated from the house by 20' (1/2 the minimum rear yard setback of 40'). It is currently separated by approximately 7'. Granting of this portion of the variance would reduce the number of structures on the site considered "accessory structures".

The third part of the variance is to allow the 135 square foot cabana to be considered an "open-air ramada" despite its failure to be separated from the house by 20' (1/2 the minimum rear yard setback of 40'). It is currently separated by approximately 5'. Granting of this portion of the variance would reduce the number of structures on the site considered "accessory structures". There is no prohibition on having two "open-air ramadas" on the site.

CODE REQUIREMENTS

The definition of an “open-air ramada”, including its maximum size and minimum separation from the house, are established in the definitions section of 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 maximum number of accessory structures is established by the Single-Family Residential (SF-33) zoning district:

35-501. Uses permitted.

- (2) One (1) accessory building as defined by Article II.

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 rectangular 33,363 square foot lot is typically sized and shaped for the neighborhood. The alley behind the property is not unique, but rather is common to all lots in the subdivision. The fact that the buildings in question were not constructed with the property owner’s permission is not a special circumstance relating to the land, building, or use. 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 owner has enjoyed substantial property rights since the house’s construction in 1985. It is not a property right to build multiple accessory structures and to not abide by open-air ramada regulations. There is room on the site for an accessory structure, porch, and open-air ramada that meet zoning regulations. 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 accessory structures and ramadas 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 expressed opposition to the variance as originally proposed, which included a request for a building used as a guest house. The guest house has since been demolished. The neighbor feared it could lead to excessive parking need and non-residential uses such as a bed & breakfast. A bed & breakfast or similar non-residential use would require Use Permit approval from City Council, which is not currently being pursued for this property. As of this writing, it appears that this neighbor is unaware of the recent demolition.

SUMMARY

Staff does not support this request. There are no special circumstances applicable to this property that are hardships that do not apply equally to similar properties in the surrounding area. The requirements to abide by the maximum number of accessory structures and to meet open-air ramada regulations are not hardships for this property. The property has been substantially developed, with the property owner enjoying development rights since 1985 with the home's original construction.

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 VAR09-1004 WISNOWSKI RESIDENCE, as recommended by Staff.

Attachments

1. Vicinity Map
2. Aerial Close-up
3. Site Plan
4. Applicant Photos
5. Application and Narrative
6. Powers and Duties

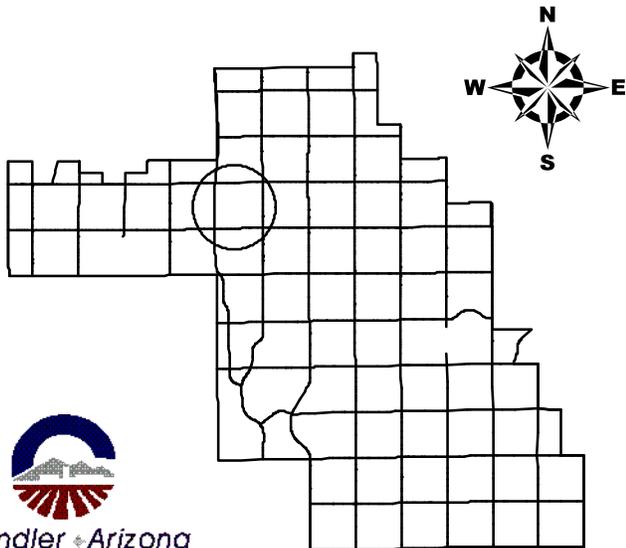


Project Site

Chandler Blvd.

Dobson Rd.

Vicinity Map



VAR09-1004

**Wisnowski Residence
2412 W. Galveston St.**

County Parcels





"BUILDING A" FROM THE SOUTH



"BUILDING A" FROM THE EAST

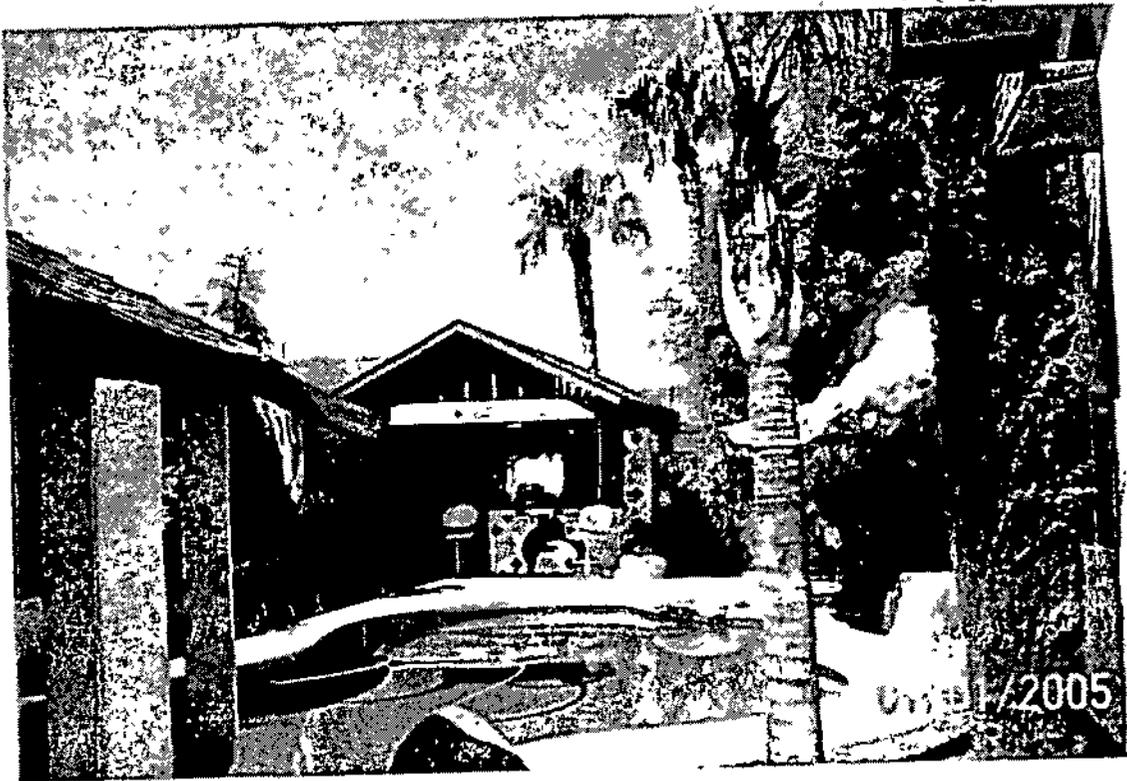


"CABANA C" FROM THE SOUTH

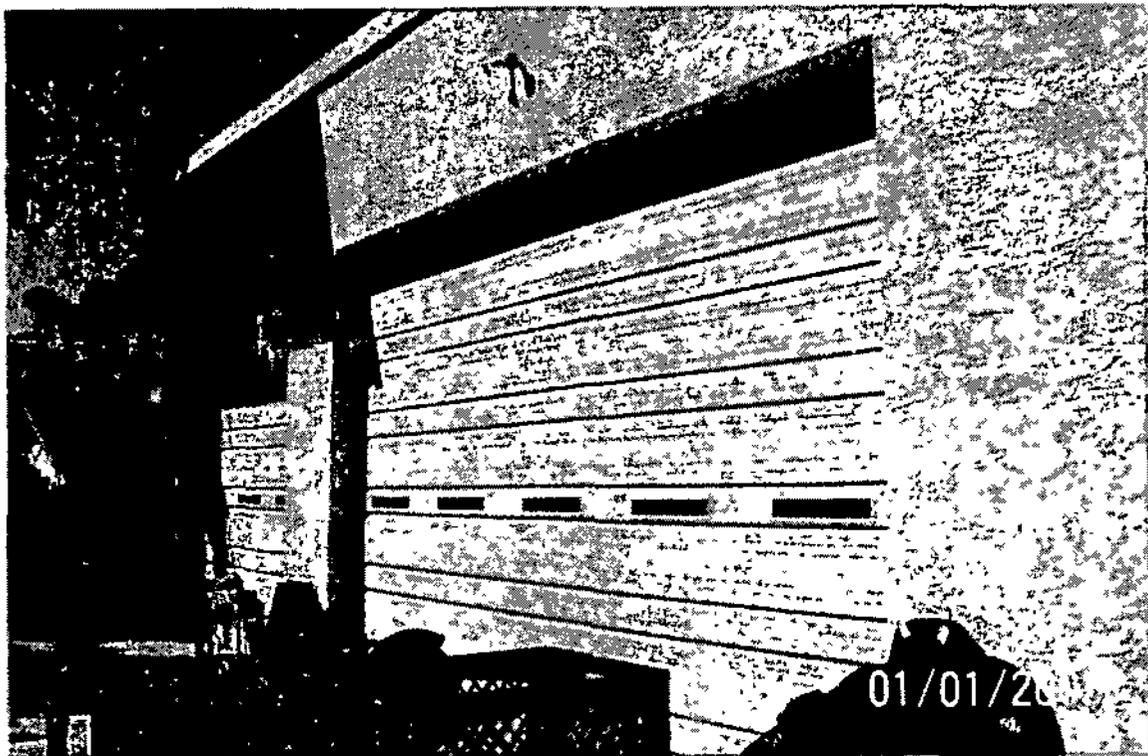


"BOWLING F"
FROM THE SOUTH
PARAPET HEIGHT
= 21'-0"

01/01/2009



"KITCHEN BAR D" FROM THE EAST



"BUILDING F" FROM THE EAST
PARAPET HEIGHT = 21'-0"



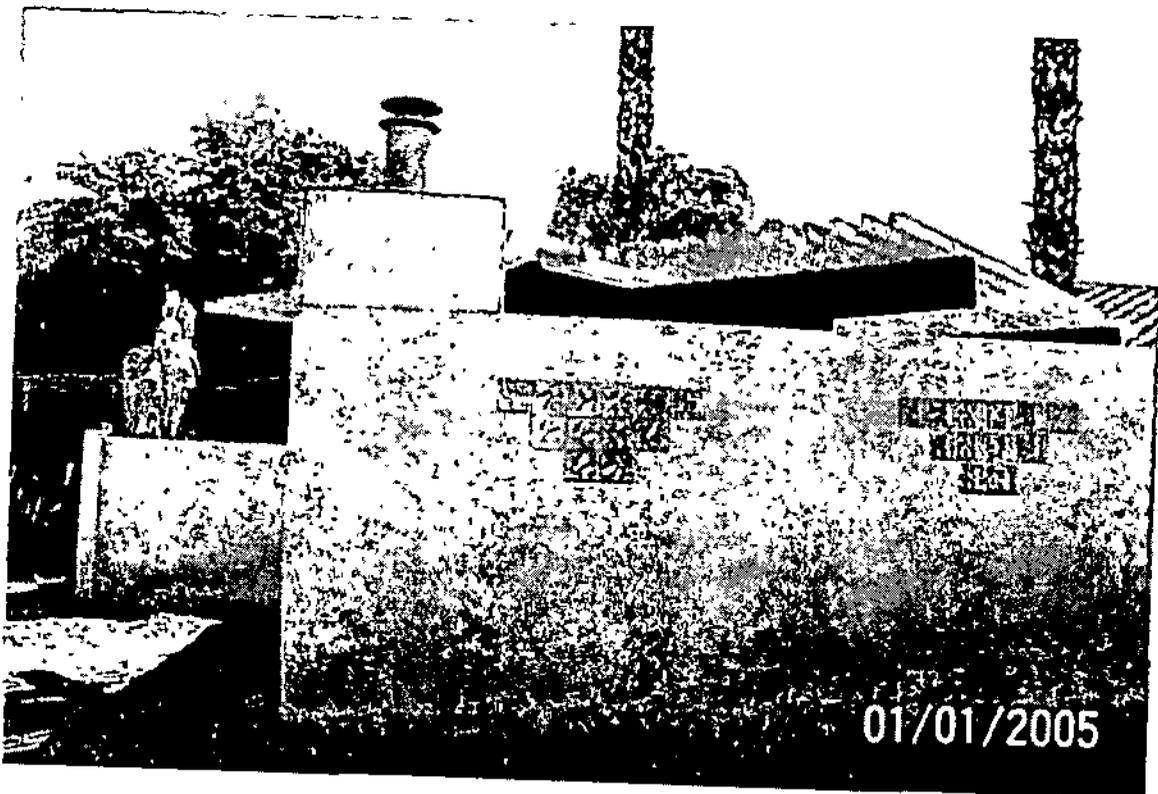
"BUILDING A" FROM THE NORTH



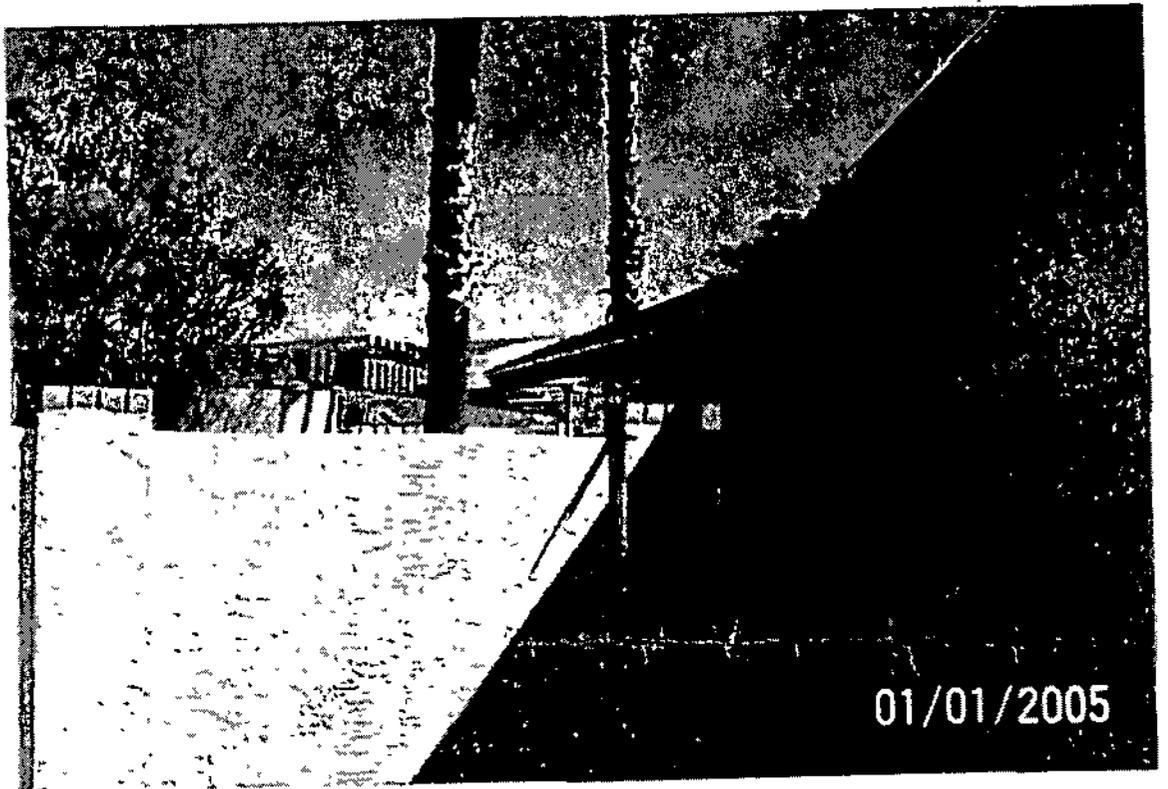
"JACUZZI LATTICE (OPEN) E" FROM THE
SOUTH 12'-0" HIGH TO TOP OF LATTICE



"JACUZZI LATTICE (OPEN) E" FROM THE
NORTH - 12'-0" HIGH TO TOP OF CASUALA



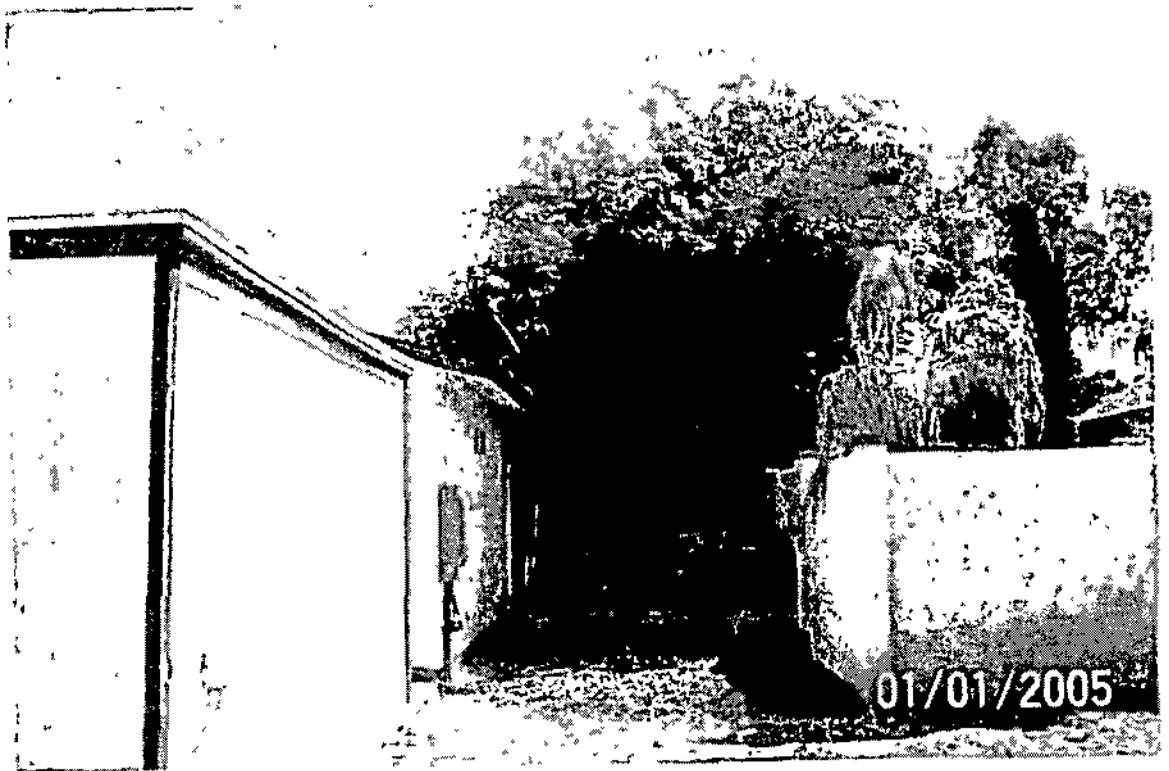
"JACUZZI LATTICE (OPEN) E" FROM THE
WEST
12'-0" HIGH TO TOP OF LATTICE



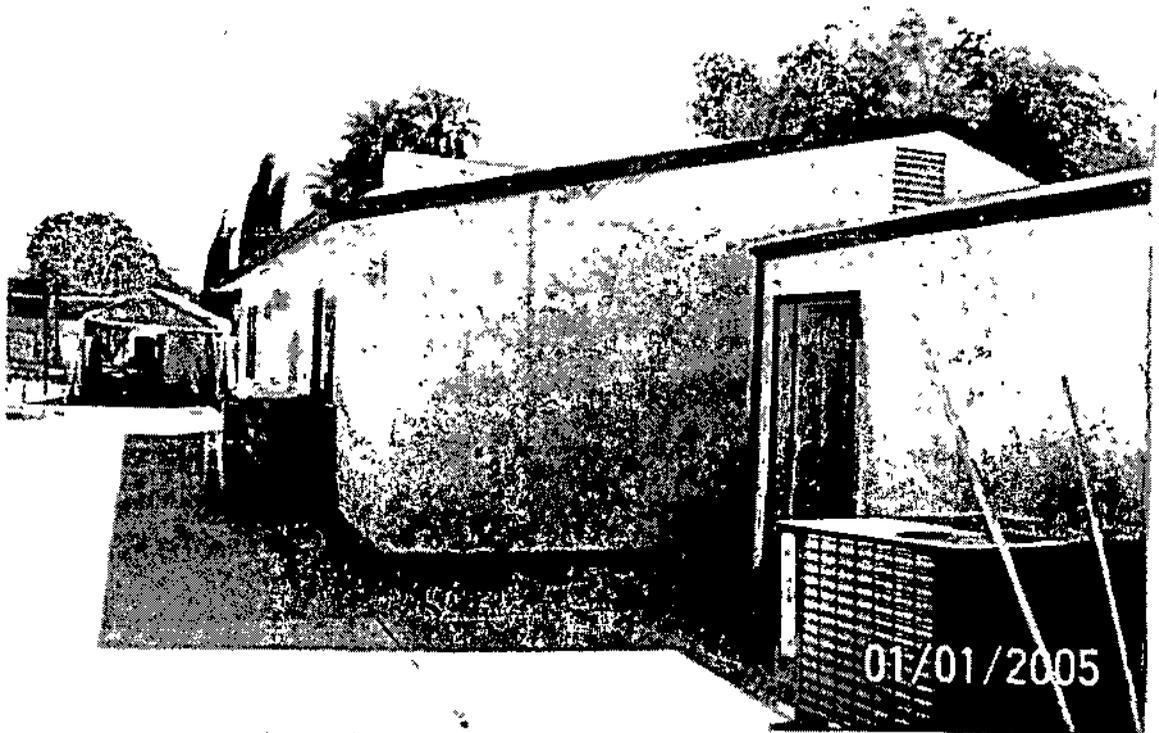
" JACUZZI LATTICE (OPEN) E " FROM THE SOUTH - 12'-0" HEIGHT TO TOP OF LATTICE



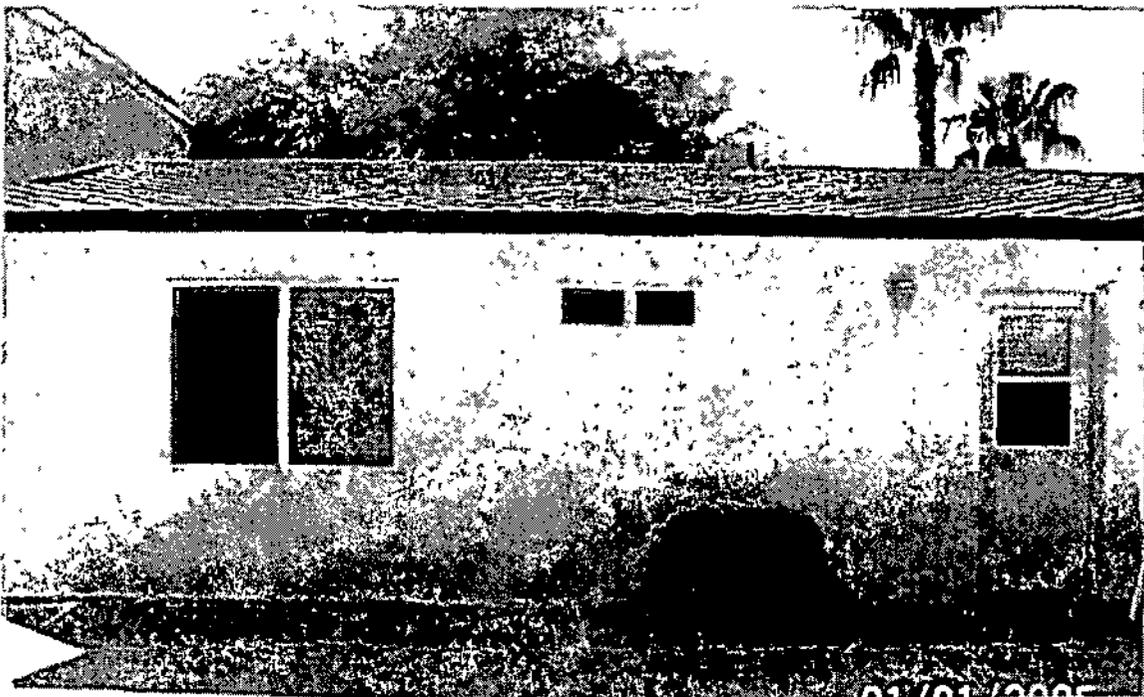
" JACUZZI LATTICE (OPEN) E " FROM THE WEST
12'-0" HEIGHT TO TOP OF LATTICE



" BUILDING H & G FROM THE WEST
BUILDING H TO BE REMOVED (METAL SIG. BLDG)
BUILDING G TO BE REMOVED - DEMO PERMIT OBTAINED.

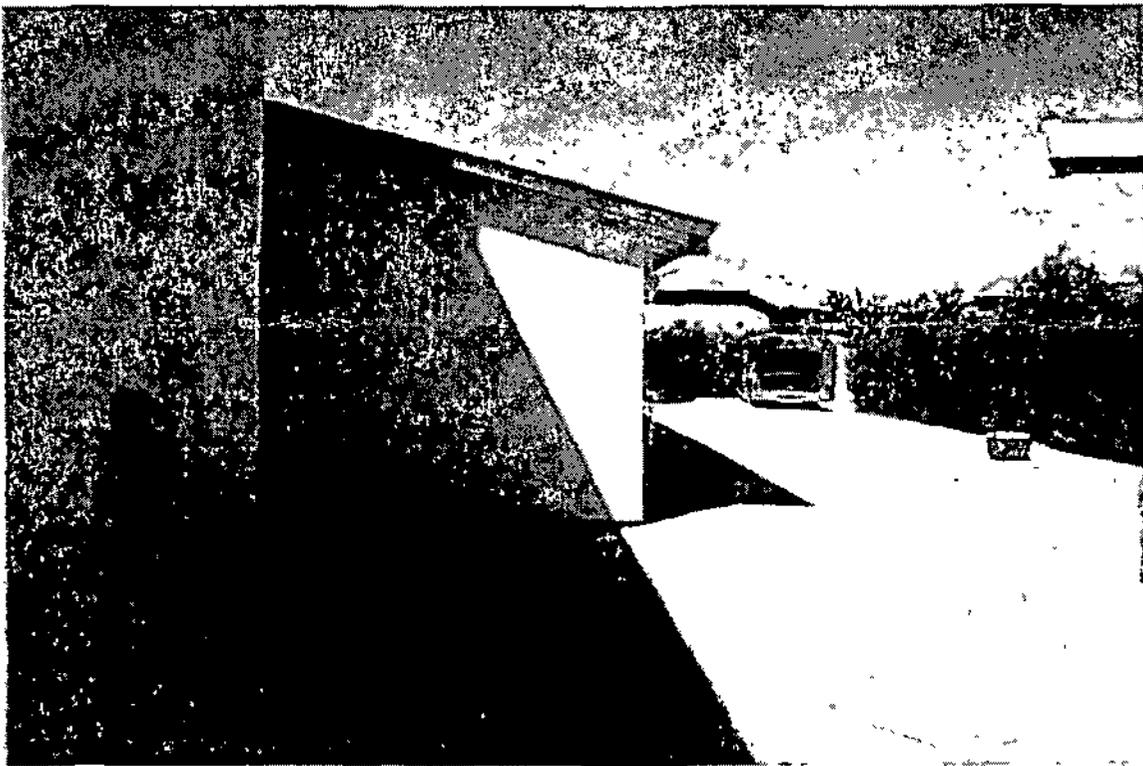


" BUILDING H & G FROM THE WEST
BUILDING H TO BE REMOVED (METAL SIG)
BUILDING G TO BE REMOVED - DEMO PERMIT OBTAINED



01/01/2005

* BUILDING 4 FROM THE NORTH
BUILDING 4 TO BE DEMOLISHED
DEMO PERMIT HAS BEEN OBTAINED



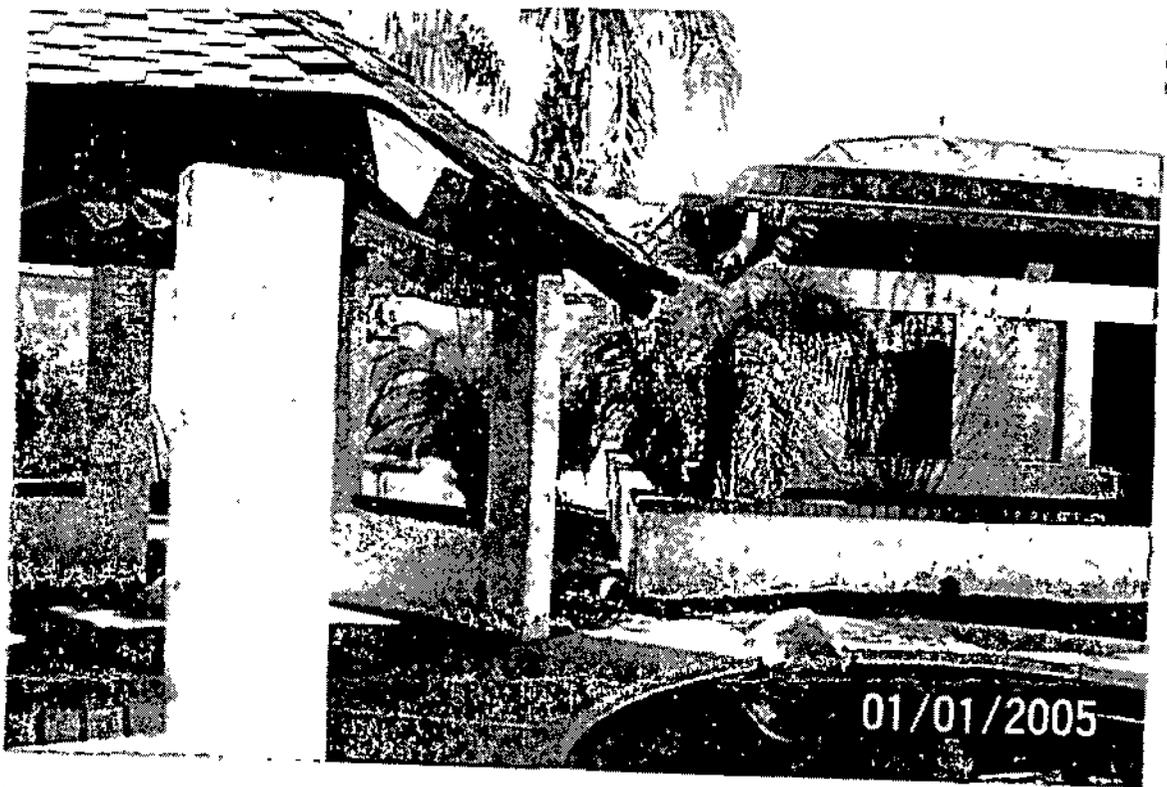
* BUILDING 4 FROM THE EAST
BUILDING 4 TO BE DEMOLISHED
DEMO PERMIT HAS BEEN OBTAINED



* BUILDING A FROM THE EAST *



* BUILDING A FROM THE NORTH *



"BUILDING A & CABANA C FROM THE NORTH"
12'-0" HIGH AT PEAK OF CABANA



BUILDING A & CABANA C FROM THE EAST
12'-0" HIGH AT PEAK OF CABANA



4 CABANA C FROM THE SOUTH 4

* NOTE: METAL STORAGE BUILDING B
WILL BE DISASSEMBLED &
REMOVED FROM THE SITE.



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Variance Request Application

If the property owner is not filing the application, please fill out the attached letter authorizing an applicant or project representative to file the application

Project or Owner Name THOMAS & PATRICIA WISNIEWSKI		
Property Location Address 12412 E. GALVESTON		City, State, Zip Code CHANDLER, ARIZ. 85224
Type of Variance (waiver) from the Zoning Code you are requesting: 1. REDUCTION OF REQUIRED SEPARATION OF POOL RAILWAY & JACUZZI LATTICE COVER FROM 10'-0" (1/2 REAR YARD SETBACK) TO 5'-0" 2. ADDING 2ND ACCESSORY BUILDING (G), KITCHEN TO BE REMOVED & MOVE REAR YARD SETBACK FROM 40' TO 30'.		
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 TOM WISNIEWSKI		
Mailing Address 12412 E. GALVESTON		Phone Number 480-722-9389
City, State, Zip Code CHANDLER, ARIZONA 85224		Fax Number
Applicant/Representative Name ROGER A. PLATE		
Mailing Address 4033 W. CAMINO ACQUA		Phone Number 623-694-7080
City, State, Zip Code PHOENIX ARIZONA 85051		Fax Number 623-934-8333
Property Owner or Representative Signature <i>[Signature]</i>		Date 9.10.09
For City Use		
Date Filed 9-14-09	Development No. VAR09-1004	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

302.45.032

Form No UDM-63
Rev 7-1-09



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Variance Request Letter of Authorization

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

2412 E. GALVESTON
CHANDLER, ARIZONA 85224

Assessor's parcel number(s):

302-45-032

Said property is owned by:

TOM WISNIEWSKI

Who hereby authorizes me to file this application on his/her behalf.

I certify that the above information is correct, and that I am authorized to file an application on said property on behalf of the owner.

[Signature] 8-31-09
Applicant Signature Date

[Signature] 9-11-09
Property Owner Signature Date

Property Owner Signature Date

Property Owner Signature Date



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Justification for Variance Request

Please answer the following questions fully in order to prove your case to the Board.

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

LEASED RESIDENCE FOR 4⁺ YEARS, WHILE ON JOB IN TEXAS.
RETURNED TO CHANDLER, TO FIND NON-PERMITTED BLDGS.
WERE CONSTRUCTED ON SITE. (RETURNED TO CHANDLER
BECAUSE LEASE PAYMENTS WERE NO LONGER BEING MADE.
CONSTRUCTION OF RAMADA, JACUZZI LATTICE, STORAGE
SHED (H) & ACCESSORY BLDGS (F & G) WERE ANNOUNCED.

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

SUBSTANTIAL COST TO REMOVE ALL NON-PERMITTED
BUILDINGS. ALL CANOPIES WILL BE REMOVED, STORAGE
SHED (H) WILL BE REMOVED, KITCHEN TO BE REMOVED
FROM ACCESSORY BUILDINGS (F & G) & AS-BUILT
CONSTRUCTION DRAWINGS WILL BE SUBMITTED TO
CITY OF CHANDLER FOR PROPER PERMITS.

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.

1. ALL OF THE VARIANCES OCCUR IN THE CENTER & REAR SECTION OF THE PROPERTY. THE REAR YARD SET-BACK VARIANCES FOR PLUG (G) IS SEPARATED FROM THE NEIGHBOR TO THE NORTH BY THE 30' SETBACK & A 16'-0" ALLEY.

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.