
**Marked Agendas
Approved Minutes
Approved Reports**

BOARD OF ADJUSTMENT REPORT



Meeting Date: 1/6/2016
Item No.: 2

ACTION

Oyague Residence Variance 12-BA-2015

Request to consider the following:

Request by property owner for approval of a variance to the City of Scottsdale Zoning Ordinance, Section 5.104.E.2 as amended by case 13-PP-2003, pertaining to the side yard setback between Lot 25 and Lot 26, for a property located at 8557 E. Nightingale Star Drive with Single-Family Residential, Environmentally Sensitive Land (R1-43 ESL) zoning.

OWNER

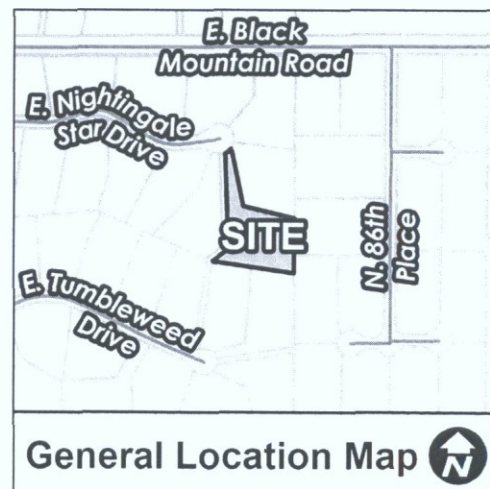
Cesar Oyague
480-234-3007

APPLICANT CONTACT

Cesar Oyague
480-234-3007

LOCATION

8557 E. Nightingale Star Drive



BACKGROUND

History

The subject site is Lot 25 of the Sierra Boulders subdivision. The subdivision was approved in 2005 via Preliminary Plat case 13-PP-2003 which included the approval of amended development standards, reducing various setback requirements by the allowable twenty-five (25) percent as provided for in Section 6.1083 of the Zoning Ordinance. The Sierra Boulders final subdivision plat was recorded in 2005, as MCR 732-27. The existing home and associated site improvements on this lot were approved and permitted in 2012 under Plan 3666-11 and

Permits 182940, 182941, and 182942. Construction for the majority of site improvements was completed in 2013.

Zoning/Development Context

The site is zoned Single-Family Residential District, Environmentally Sensitive Lands Overlay (R1-43 ESL). The R1-43 ESL zoning district allows for single-family residential uses and includes the Environmentally Sensitive Lands zoning overlay, which is intended to preserve the character of the natural desert environment.

This site is located at 8557 E. Nightingale Star Drive, which is south of E. Black Mountain Road and east of N. 84th Street, along the south side of E. Nightingale Star Drive which is a gated street terminating with a cul-de-sac. This property accesses from the cul-de-sac.

Adjacent uses and zoning

- North: Single-Family Residential, Environmentally Sensitive Lands, zoned R1-43 ESL; existing single-family residential subdivision Sierra Highlands.
- South: Single-Family Residential, Environmentally Sensitive Lands, zoned R1-43 ESL; existing single-family residential subdivision Boulder Ridge.
- East: Single-Family Residential, Environmentally Sensitive Lands, zoned R1-43 ESL; existing single-family residences.
- West: Single-Family Residential, Environmentally Sensitive Lands, zoned R1-43 ESL; existing single-family residential subdivision Cortona.

Zoning Ordinance Requirements

Pursuant to Article V, Section 5.0104.E.2: "There shall be a side yard having a depth of not less than twenty (20) feet on each side of the building."

As amended by case 13-PP-2003: the required side yard setback was reduced from twenty (20) feet to fifteen (15) feet.

The applicant is requesting a variance of seven (7) feet which would reduce the required side yard setback for this parcel from fifteen (15) feet to eight (8) feet along the boundary between Lot 25 and Lot 26.

Code Enforcement Activity

There are no active enforcement issues at this time.

Community Input

Neighboring properties within 750 feet of the site have been notified of the applicant's request. At the time of this report staff has not received any comments from adjacent property owners.

Discussion

The applicant is requesting a variance from the required fifteen (15) foot side yard setback, along the boundary between Lot 25 and Lot 26, to bring the existing home into conformance. Specifically, they are requesting a reduction of seven (7) feet which would result in a side yard setback requirement of eight (8) feet to align with the actual constructed location of the existing house.

In 2012, the house and associated site improvements on the subject property were approved and permitted compliant with the City's zoning requirements. However, based on a survey staking error, the house was ultimately constructed approximately eight (8) feet from the side property line instead of the fifteen (15) feet required by the development standards and shown on the approved site plan. As such, the house is a non-conforming structure under Section 1.300 of the Zoning Ordinance. The applicant is now attempting to address the situation by bringing the structure into conformance by requesting the proposed setback variance for the amount of the discrepancy.

Expansion of a non-conforming structure

As addressed under Section 1.1304 of the Zoning Ordinance, pertaining to nonconforming structures, there are no exceptions provided to expand non-conforming structures on parcels that fall under the provisions of the Environmentally Sensitive Lands Overlay (ESLO) with the idea that such modifications could generally be addressed under the Amended Development Standards process outlined in Section 6.1083 of the Zoning Ordinance. Similarly, the Minor Amendment procedure, under Section 1.207 of the Zoning Ordinance, is inapplicable to properties within the Environmentally Sensitive Lands Overlay district, again because the ESLO allows for the possibility to amend development standards.

Under the provisions of Section 6.1083, properties within the Environmentally Sensitive Lands zoning overlay may apply for Amended Development Standards, and the minimum setback requirements of the underlying zoning district may be reduced up to twenty-five (25) percent. The original subdivision case, 13-PP-2003, included the request for and approval of the maximum allowable reduction in the side yard setback requirement.

To bring the existing home into conformance and allow any future expansion to the structure, a variance of seven (7) feet is requested to the side yard setback along the boundary between Lot 25 and Lot 26.

VARIANCE CRITERIA ANALYSIS

1. That because of special circumstances applicable to the property including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will

deprive such property of privileges enjoyed by other property of the same classification in the same zoning district:

The applicant states that the special circumstances applicable to this property are that the Land Surveyor incorrectly set the original building stakes for construction which led to the home being constructed eight (8) feet and six (6) inches from the property line instead of the fifteen (15) feet that was required and shown on the approved plans. The original house placement toward the northern setback line was chosen because of the wash that runs along the southern property line.

Staff Analysis: The subject property is a flag lot with the majority of the lot area located to the south of (behind) the adjacent Lot 26 to the east. Although it may be similar in size, shape, and topography to other flag lots within the R1-43 zoning district, it is not a typical rectangular shaped lot, and due to the irregular lot configurations the proposed side yard setback reduction may be less impactful to the proximity of this house to the neighboring house. The southern portion of the site is overlapped with Natural Area Open Space (NAOS) and Drainage Easements (DE) which prohibit development on that portion of the site. The development standards would allow for a detached accessory structure to be proposed within the existing yard area to the southwest of the house, but as a nonconforming structure the main house would continue its inability to be expanded under the regulations of Section 1.1304 of the Zoning Ordinance.

- 2. That the authorization of the variance is necessary for the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, and does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located:**

The applicant states that the variance is not requesting special privileges, but instead is just to bring the existing house location into conformance. If the variance is not granted, no additions or expansions could be made to the house in the future.

Staff Analysis: The R1-43 zoning district allows for primary use as a single-family residence. Regardless of the outcome of this variance request, the existing structure can continue to function as a single-family residence. The development standards would allow for a detached accessory structure to be proposed within the existing yard area to the southwest of the house, but as a nonconforming structure the main house would continue its inability to be expanded under the regulations of Section 1.1304 of the Zoning Ordinance, unless altered to conform.

- 3. That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant:**

The applicant states that the situation was not created by the property owner (himself), but was instead the result of a survey staking error by the Land Surveyor.

Staff Analysis: The existing home and site improvements were approved and permitted in 2012, compliant with the City's zoning requirements. Due to a survey staking error, the

construction of the house and some portions of the associated site improvements followed the approved plans but occurred in the wrong location on the property. This issue was not identified until after construction was completed on the site.

4. That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general:

The applicant states that granting the variance will not affect the neighboring properties. The affected area is adjacent to the neighboring property's NAOS and the neighbor's fence is at least twenty-five (25) feet away from the property line and the neighbor's house is over sixty (60) feet away.

Staff Analysis: The intent of the required setbacks between properties is to create an open residential character, to establish view corridors, and to maintain spacing between main buildings on adjacent properties. The side property line in question is directly adjacent to the neighboring property's dedicated Natural Area Open Space (NAOS) which in itself creates an additional buffer between site improvements on adjacent properties. If the requested variance is granted, the minimum thirty (30) foot separation required between structures on adjacent properties will still be met with the current location of both homes. Staff has not received any comments from the adjacent property owners as of the writing of this report.

SUMMARY

Based on the facts presented by the applicant, the evidence may support a finding that the property has special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size, shape, or configuration of the property is unique and applicable. Further, the applicant's proposed variance does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood. However, the decision about whether the criteria have been met is for the Board to make after hearing all the evidence at the hearing.


APPROVED BY



Jeff Barnes, Report Author

12/15/2015

Date



Brad Carr, AICP, Board of Adjustment Liaison
480-312-7713, bcarr@scottsdaleaz.gov

12.16.2015

Date



Tim Curtis, AICP, Current Planning Director
480-312-4210, tcurtis@scottsdaleaz.gov

12/16/2015

Date



Randy Grant, Director
Planning and Development Services
480-312-2664, rgrant@scottsdaleaz.gov

12/17/15

Date

ATTACHMENTS

1. Project Narrative
2. Context Aerial
3. Aerial Close-Up
4. Zoning Map
5. Site Photographs
6. Proposed Site Plan
7. Building Permit Site Plan

Board of Adjustment

Variance Project Narrative

Side yard Setback 5.104 e 2

I would like to get a variance on my side yard setback to 8'. This is for an existing built condition. There will be no other building into setbacks on entire property. I want to bring my house in compliance with the City of Scottsdale. The city planners have advised me that since my house is non-conforming they will not issue any additional permits.

1. The special circumstances applicable to this property is that the Land Surveyor incorrectly set the original building pins. Therefore my home is built 8'5" from the property line and not the 15' that is required. The house plans show that it should have been built on the 15' north side setback line. This was done because of the FEMA wash that runs along the southern property line. By allowing this variance it will also provide my home with a extra level of protection against flooding!
2. This variance will not grant me any special privileges. The house is already built. I only want to have the variance for the as-built section, nothing else. If I am unable to bring my home in compliance with the City of Scottsdale I will not be able to build and addition on the west side of my house. This will deprive me the ability to increase the livable area of my home and increase the value of my property.
3. This issue was not self imposed or created by the owner in any fashion. This was a mistake by a Registered Land Surveyor. See Roger Delps letter.
4. This variance will not affect anyone. My north side yard property line backs to NAOS land. The neighboring properties fence is 25' from my north side property line. The neighboring house next to affected property line is in excess of 60'.



Oyague Residence Variance

12-BA-2015



Oyague Residence Variance

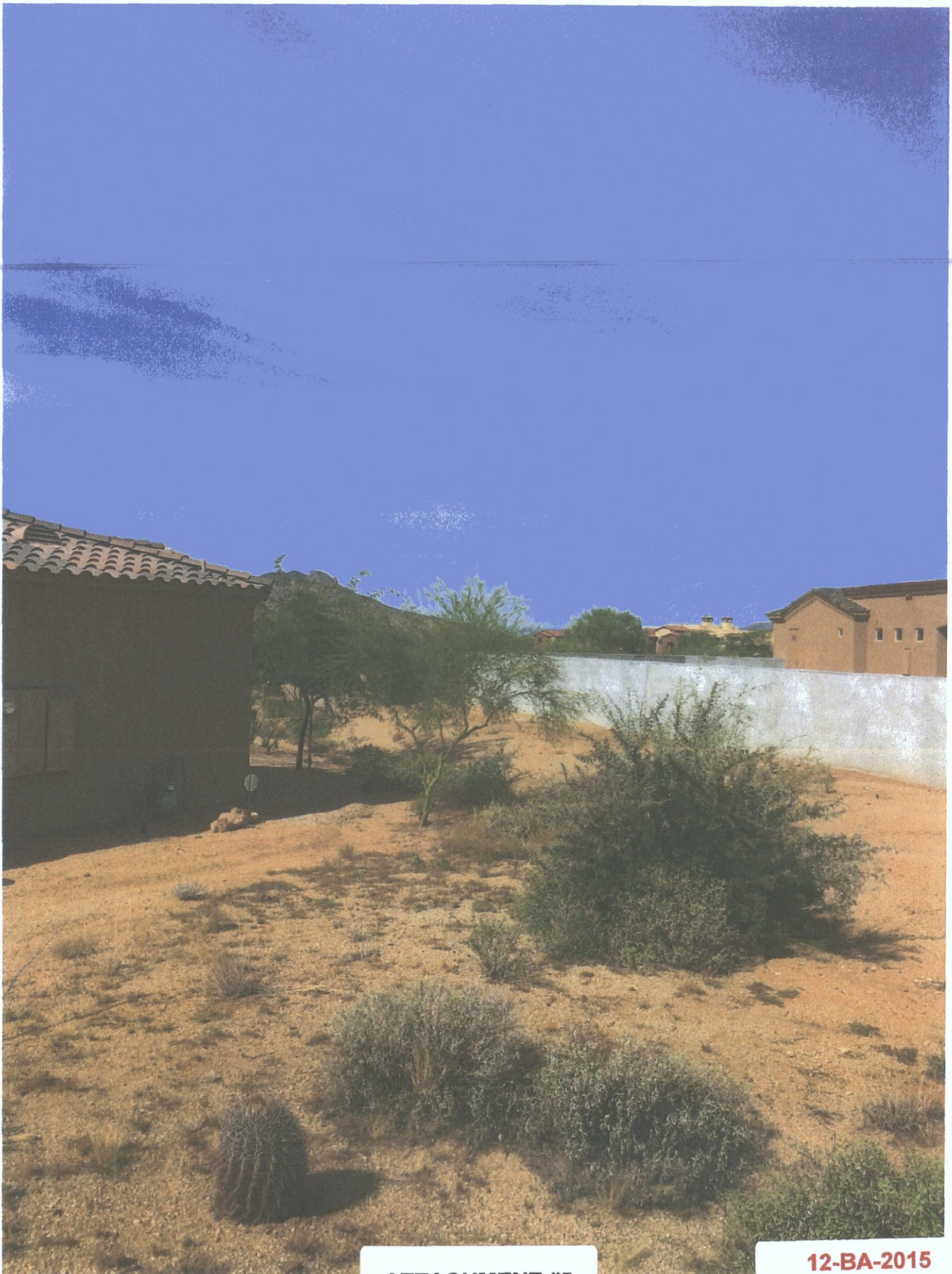
12-BA-2015

ATTACHMENT #4



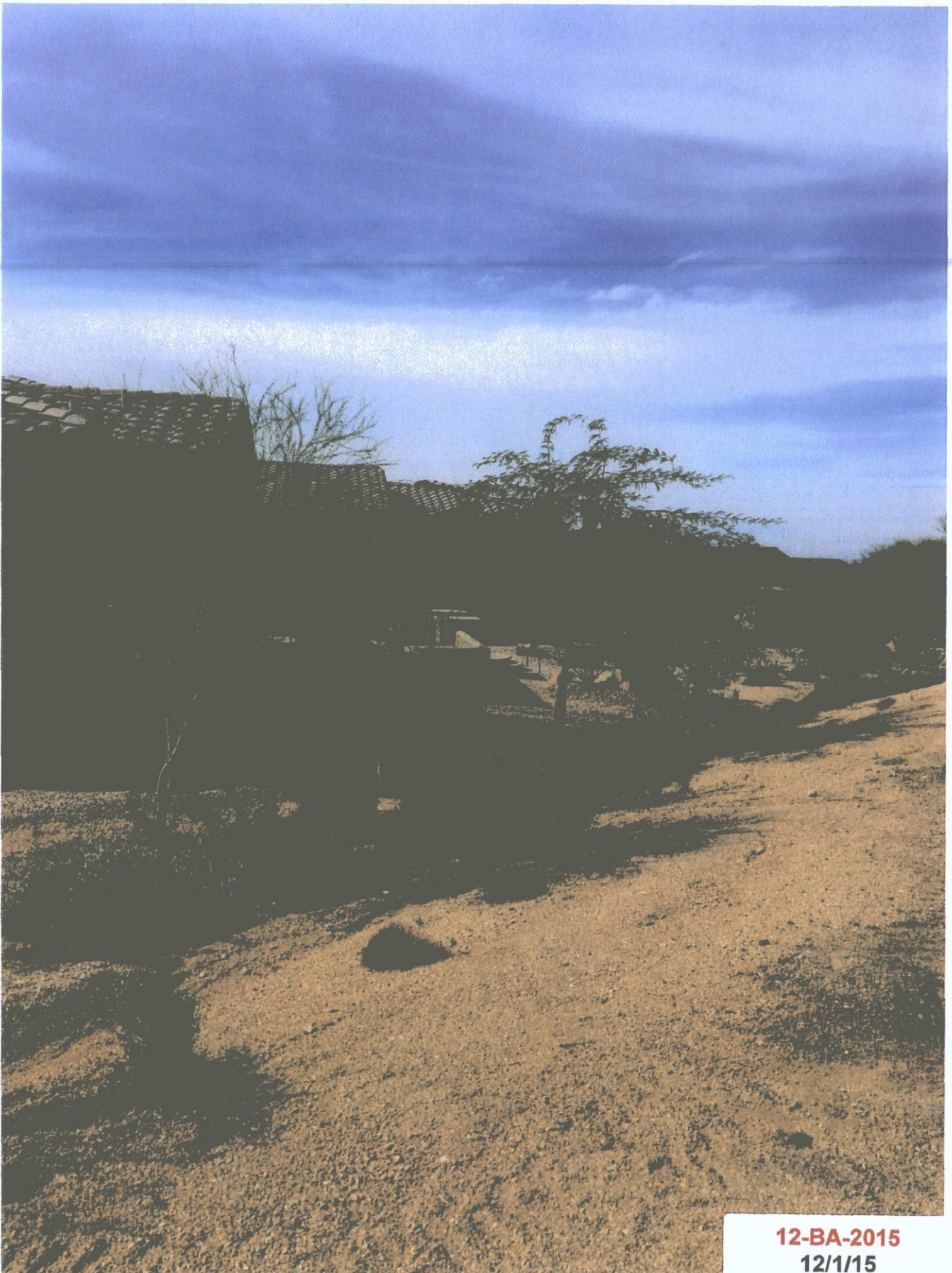
Oyague Residence Variance

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ATTACHMENT #5

12-BA-2015
12/1/15



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12/1/15

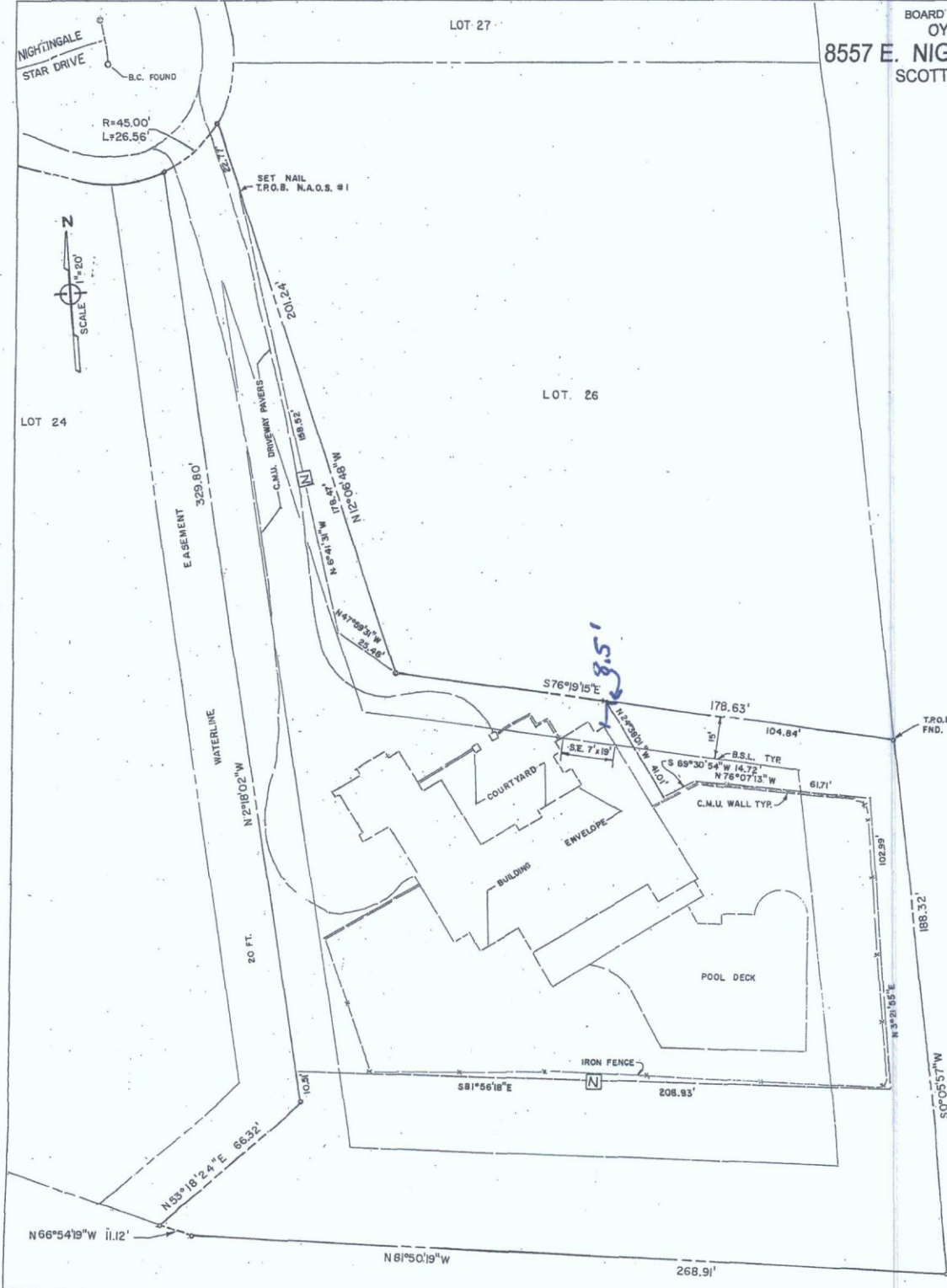


12-BA-2015
12/1/15



12-BA-2015
12/1/15

BOARD OF ADJUSTMENT SITE PLAN
 OYAGUE RESIDENCE
 8557 E. NIGHTINGALE STAR DR.
 SCOTTSDALE, ARIZ. 85266



ATTACHMENT #6

12-BA-2015
 12/1/15

