



Marked Agendas

Approved Minutes

Approved Reports

**The March 4, 2020
Board of Adjustment
Agenda and Minutes can
be found at**

<https://www.scottsdaleaz.gov/boards/board-of-adjustment>



Board of Adjustment Decision

Zoning Ordinance Variance

Variance Request

Case Numbers: 907-PA-2019 / 2-BA-2020

Project Name: Windrose Wall Variance

Location: 7748 E Windrose Dr

Single-Family Residential Multi-Family Residential Commercial Industrial

Section of the Zoning Ordinance to be varied: 5.404.G

Scottsdale Ordinance Requires: Walls up to three feet high are allowed in the front yard.


Applicant's Request: Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.404.G pertaining to the maximum wall height in the required front yard for a property with Single-Family Residential, Planned Community District (R1-10 PCD) zoning located at 7748 E Windrose Drive

Amount of Variance: Three feet; for a wall six feet high in the front yard.

Board of Adjustment Decision

Hearing Date: **MARCH 5, 2020**

- Approved Approved with Stipulation(s):
 Denied Continued to:
 Other:



Chair Signature

BOARD OF ADJUSTMENT REPORT



Meeting Date: 3/4/2020

ACTION

Windrose Wall Variance 2-BA-2020

Request to consider the following:

1. Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.404.G pertaining to the maximum wall height in the required front yard for a property with Single-Family Residential, Planned Community District (R1-10 PCD) zoning located at 7748 East Windrose Drive.

OWNER/APPLICANT CONTACT

Dan Zufall
612-251-8478

LOCATION

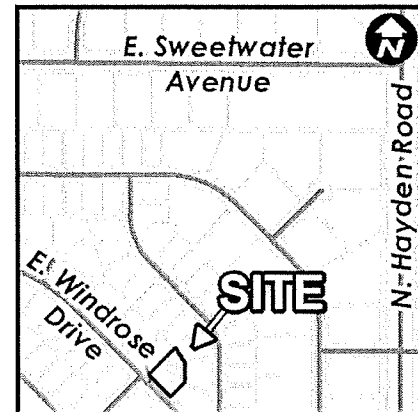
7748 East Windrose Drive

BACKGROUND

History

The subject property was annexed into the City of Scottsdale in 1962 under Ordinance 165. The area was rezoned from Single Family Residential (R1-35) to Planned Community District (PCD) in 1973. The PCD zoning district included the three zoning classifications of R1-10, R1-7 and R-4 with amended development standards under case 46-Z-1973. The PCD zoning district was amended in 1977 to include only the R1-35 and R1-10 comparable zoning districts while removing the amended development standards provided with case 46-Z-1973. That case, 48-Z-1977, was adopted through Ordinance No. 1086. The subject site is located within the Buenavante II subdivision which was platted in 1979. The existing home on the site was permitted and constructed in 1985.

On December 5, 2012, the property directly to the southeast of the subject property, 7798 East Windrose Drive, was denied two variances for the front yard setback requirement and front yard setback requirement for corner lots (4-BA-2012).



Zoning/Development Context

The subject property is zoned R1-10 PCD with no amended development standards. The subject property is adjacent on all sides to other residential lots with R1-10 PCD zoning within the Buenavante II subdivision.

Zoning Ordinance Requirements

The City of Scottsdale Zoning Ordinance section 5.404.G pertaining to walls, fences, and landscaping states “Walls, fences and hedges up to eight (8) feet in height are allowed on the property line or within the required side or rear yard. **Walls, fences and hedges up to three (3) feet in height are allowed on the front property line or within the required front yard**, except as provided in Article VII.”

The City of Scottsdale Zoning Ordinance section 5.404.E.1.a states “There shall be a front yard having a depth of not less than thirty (30) feet.”

The applicant is requesting a height variance of three (3) feet to allow for a wall up to six (6) feet tall at eighteen (18) feet away from the front property line within the thirty (30) foot required front yard.

Code Enforcement Activity

There is an active code enforcement case on this property with two violations in the case file. One violation is for building the subject wall without a permit; the second violation is for violating the development standards discussed above. Granting the proposed variance would resolve the latter violation.

Community Input

City of Scottsdale notification postcards were sent to property owners within 750 feet of the subject site. As of the writing of this report, staff has received 2 emails opposing the proposed variance (see attachment 10).

The applicant has provided a letter of support from a nearby property owner within the same subdivision (see attachment 7).

Discussion

The applicant is requesting a variance to build a six (6) foot tall wall within the thirty (30) foot required front yard. The applicant’s narrative states that a wall in this location is necessary because the unique shape of the property provides less usable back yard space compared to other lots within the same subdivision.

Without the granting of the variance, the applicant would be able to build a wall up to three (3) feet tall within the thirty (30) foot required front yard, or alternatively be able to construct a six (6) foot tall wall set back thirty (30) feet from the front property line.

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:

Applicant Statement:

The applicant states in their narrative that the special circumstance applicable to this property is its shape; the rear yard is cutoff on the northeastern corner because the property boundary runs at an angle unlike a typical rectangular lot. According to the applicant, this lot configuration deprives them of approximately 1,658 square feet of usable rear yard and side yard space compared to the typical lot in this subdivision. The applicant states that in order to have the same amount of usable rear and side yard space, they need to be able to build a wall closer to the front property line than is typically permitted and that a wall taller than three (3) feet is necessary to meet pool barrier safety requirements.

Staff Analysis:

The subject property is an unusual shape compared with the typical lot within the Buenavante II subdivision. A portion of the side property line on the east does run at an angle to the rear property line, cutting off the typical rectangular shape of a lot within this subdivision. This can be seen in the aerial image of the property attached to this report. However, the subject property is significantly larger and has a bigger side yard than the typical lot in this subdivision.

The subject property is adjacent to several lots in this subdivision to the north and west that are 80 feet wide and 150 feet deep. The subject property is 127.16 feet wide at the front and 150 feet deep on the northwest side but is cut short at 78.71 feet on the southeast property line and 70.38 feet on the rear property line. The rear yard area of a typical lot in this subdivision is 2,000 square feet while the required rear yard area of the subject property is 1,759.5 square feet.

This property is larger than the typical lot in this subdivision; the typical lot in Buenavante II is around 12,000 or 13,000 square feet while the subject property is approximately 16,367 square feet. Using a typical lot size of 12,500 square feet, the subject property is 27% larger than typical for the subdivision. The subject property's larger side yard constitutes much of this difference; while a home on a typical lot is usually built at or close to the fifteen (15) foot required side setback, measurements using aerial imagery indicate that the home on the subject property is built approximately 43 feet from the side property line that is perpendicular to the street on the southeast side of the property. Thus, while the shape of the subject property may be unusual, the significantly larger size of the subject property in comparison to adjacent lots may compensate for it.

- 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:**

Applicant Statement:

The applicant states in their narrative that the placement of a six (6) foot tall wall in the proposed location is necessary to enjoy the same amount of private rear yard space as more typically-shaped symmetrical lots while meeting the pool barrier safety requirements for the existing pool in the rear of the property. The property's unusual shape pushes all use of the property forward, depriving the owner of the typical usable rear yard area. According to the applicant, the authorization of the variance would compensate for the 1,658 fewer square feet of usable rear yard area by allowing 365 square feet of the required front yard to be enclosed and used as side and rear yard space.

Staff Analysis:

The zoning ordinance requirement prohibiting walls over three (3) feet tall in the required front yard is applicable to all lots within this subdivision. The only circumstance where walls over three (3) feet tall may ordinarily be built closer to the right of way than thirty (30) feet is on the longer street frontage of corner lots not abutting a key lot. While the subject property may have an unusual shape reducing the rear yard area compared to other lots in this subdivision, the subject property enjoys a significantly larger side yard area than is typical. The subject wall could be built according to the requirements of the ordinance and still provide a large usable side yard without the need for a variance.

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

Applicant Statement:

The applicant states in their narrative that the home was built in 1985 and that the lot boundaries were established in their present configuration at the time the home was built. The applicant purchased the property in 2017 and did not establish the property boundaries of the placement of the home on the lot. The irregularly shaped lot and defined usable spaces within the lot were already established and pre-date the applicant.

Staff Analysis:

The subject property was given its current zoning in 1977 by vote of the Scottsdale City Council. The property was platted in its current configuration along with the rest of the Buenavante II subdivision in 1979 and the home was built in 1985 according to the Maricopa County Assessor's records. The Maricopa County Assessor's website indicates that the latest sale date of the subject property is March 2017. The location of the subject wall was chosen by the applicant.

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:

Applicant Statement:

The applicant states in their narrative that the authorization of the variance will not be materially detrimental neighborhood or the public and will be beneficial to the public by preserving the rights of the homeowner while being aesthetically pleasing and acting as a pool safety barrier. The applicant states that the front yard will maintain an open feel as intended by the thirty (30) foot front yard setback as the property has more total front yard space than is required. The length of the front property line is 127.16 feet, meaning that the required front yard area with a thirty (30) foot front setback is 3,815 square feet. According to the applicant, the actual setback of the home is 55 feet from the front property line and the existing wall enclosing the side yard on the west side of the property is setback 68 feet from the front property line, meaning that the property will maintain 5,167 square feet of total front yard space in excess of the 3,815 square feet of required front yard area.

The applicant also states that they have provided a letter of support from a property owner residing across the street from the proposed wall and that there is a shared wall agreement in place with the owner of the property adjacent to the proposed wall. The applicant states that the garage of the property adjacent to the proposed wall is currently built at 24 feet from the frontage shared with the subject property, which reduces the effect of the applicant's proposed wall has on the open feeling of frontages along the street.

Staff Analysis:

The intent of the required setbacks along street frontages is to create an open residential character, to establish view corridors, and to maintain uninterrupted visual continuity with adjacent lot setbacks for main buildings. Given the subject property's front property line length of 127.16 feet and the thirty (30) front yard setback requirement, the required front yard area of the subject property is 3,814.8 square feet. At the applicant's proposed wall setback of eighteen (18) feet from the front property line, an unobstructed front yard of 2,288.9 square feet would be maintained, 1,525.9 fewer than is normally required by the ordinance.

As of the writing of this report, staff has received 2 emails opposing the proposed variance. The applicant has provided a letter of support from a nearby property owner within the same subdivision; the letter is attached to this report.

SUMMARY

Based on the facts presented by the applicant, the evidence would support a finding that the property may not have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The shape or configuration of the property is unique; however, the subject property is approximately 27% larger than the typical lot in this subdivision. The applicant's proposed variance does appear that it may be detrimental to persons residing or working in the surrounding neighborhood and alternative locations for the subject six (6) foot tall wall that meet the requirements of the zoning ordinance do exist. 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



Omar Smailbegovic, Report Author
480-312-3087, osmailbegovic@scottsdaleaz.gov

2-11-2020

Date



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

2-11-2020

Date



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

2/11/2020

Date



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

2/13/20

Date

ATTACHMENTS

1. Project Narrative
2. Context Aerial
3. Aerial Close-Up
4. Zoning Map
5. Site Photographs
6. Proposed Site Plan
7. Neighbor Support Letter
8. Shared Wall Agreement
9. Neighborhood Sample Photographs
10. Correspondence

Type of variance requested, section(s) of the Zoning Ordinance to be varied:

We are requesting a variance from the requirement of the zoning ordinance that walls, fences, and hedges up to three feet in height are allowed on the front property line or within the required front yard setback on the eastern side of the property. The zoning ordinance section is 5.404.G.

- 1. That because of special circumstances applicable to the property including it's size, shape, topography, location, or surroundings, the strict application of zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district:**

The property is of extremely unique shape, notably a diamond shape, whereby the backyard and a large portion of the side-yard of the property is completely cutoff on the rear north-eastern corner by its defined lot boundaries. This sharp angular definition on the north-eastern rear lot corner deprives the homeowner of approximately 1658 square feet of usable backyard & sideyard property space vs. if the lot would have originally been defined in a symmetrical manner (a symmetrical lot would have included an additional 65' x 51' triangular section of the northeast rear corner of the lot). This lot shape, pushes the use of the eastern side of the property forward, into the side yard and front yard, as the backyard on this side of the property does not exist. However, the strict enforcement of the required 30' front yard setback limits the ability to safely use the remaining sideyard and adequate front yard space to properly offset and compensate for the missing backyard space due to the inability to build a wall or fence in excess of 3'. The property contains a pool, so a minimum of 5' containment fence is required to meet zoning and safety standards.

- 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 authorization of a variance is necessary to preserve the privileges and rights enjoyed by other property owners in the same classification and zoning district whose lot shapes are symmetrical defined thereby allowing for similar use of the subject property to those properties who have a symmetrical defined backyard. The property's lot shape, which pushes the use of the property forward into the side and front yard, is subject it to a 30' front yard setback per zoning requirements as mentioned prior. Therefore, without the authorization of a variance, no walls can be built in excess of 3' within that front yard setback area, further limiting the safe, usable area of the property on the eastern side, as the property contains a pool, and it is legally required to have a containment wall of at least 5' in height to protect the safety of the general public. The variance will simultaneously allow for the preservation of the rights of the owner allowing for similar use as symmetrical property owners by allowing for a small portion of the front yard setback space (365 square feet per proposed site plan wall) to make up for the backyard and sideyard lost by the irregular lot shape (1658 square feet missing), while protecting the public by allowing for a 6' wall to be built within the existing front yard setback meeting the necessary pool containment wall safety standards.

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

The existing property was built in 1985, with the property's border being defined prior to that time. The current homeowner purchased the home in 2017, and did not define the property's border, nor the placement of the existing home onto the lot. The irregularly shaped lot and defined usable spaces within the lot were already established and pre-existing to the current owner.

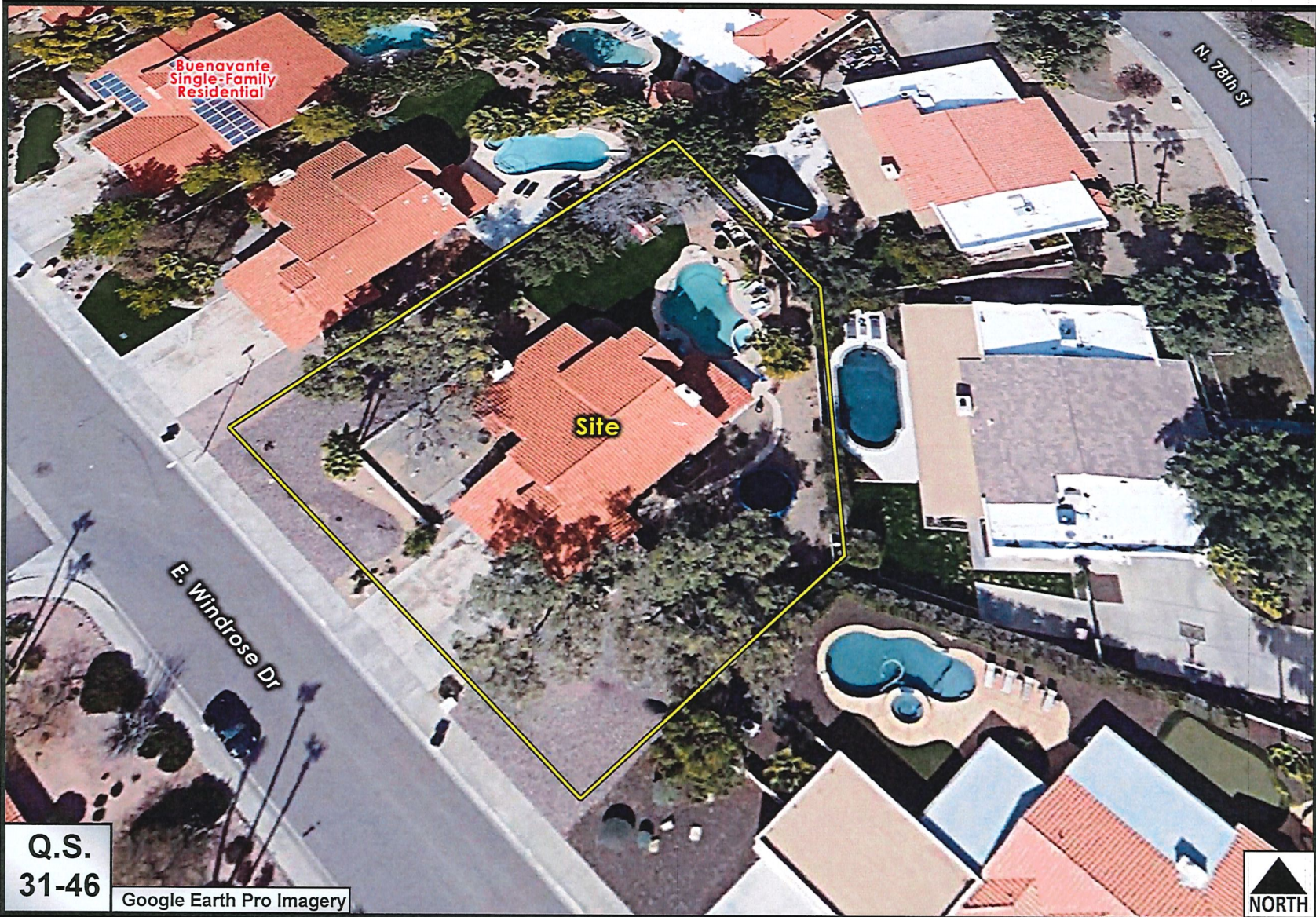
4. That authorization of the variance will not be materially detrimental to the persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

The authorization of the variance will not be materially detrimental to the public or neighborhood in any way. Exactly the opposite, as the authorization of a 6' wall within the 30' front yard setback will protect the public by meeting the zoning standards for a containment fence surrounding a pool, while preserving the rights of the homeowner, and still being aesthetically pleasing in design and consistent with property wall placement and characteristics of countless surrounding properties in the neighborhood. It is also important to note that the property front yard will still maintain an open feel as intended by the 30' setback, with excess front yard square footage in its entirety. The width of the front property line is 127.16', so a 30' setback equates to 3815 square feet in front yard setback space. The main home itself is setback at 55', with the western sideyard fence being setback at 68 feet. The property will still maintain a total front yard square footage of 5167 even after the variance approval, which is well in excess of the 3815 square footage required assuming strict application of the setback requirement. In addition, a written shared wall agreement is in place with the support of the homeowner adjacent to the site plan wall, as well as a written letter of support by the property owner directly across from the site plan wall. It is also important to note that the adjacent property's existing garage which is directly next to the proposed site plan wall, is nearly a mirror image of the proposed site plan wall. It is built within the 30 foot setback area currently, at 24' from the setback, keeping the proposed wall at 20' from the setback aesthetically similar to the neighboring layout.



Context Aerial

2-BA-2020



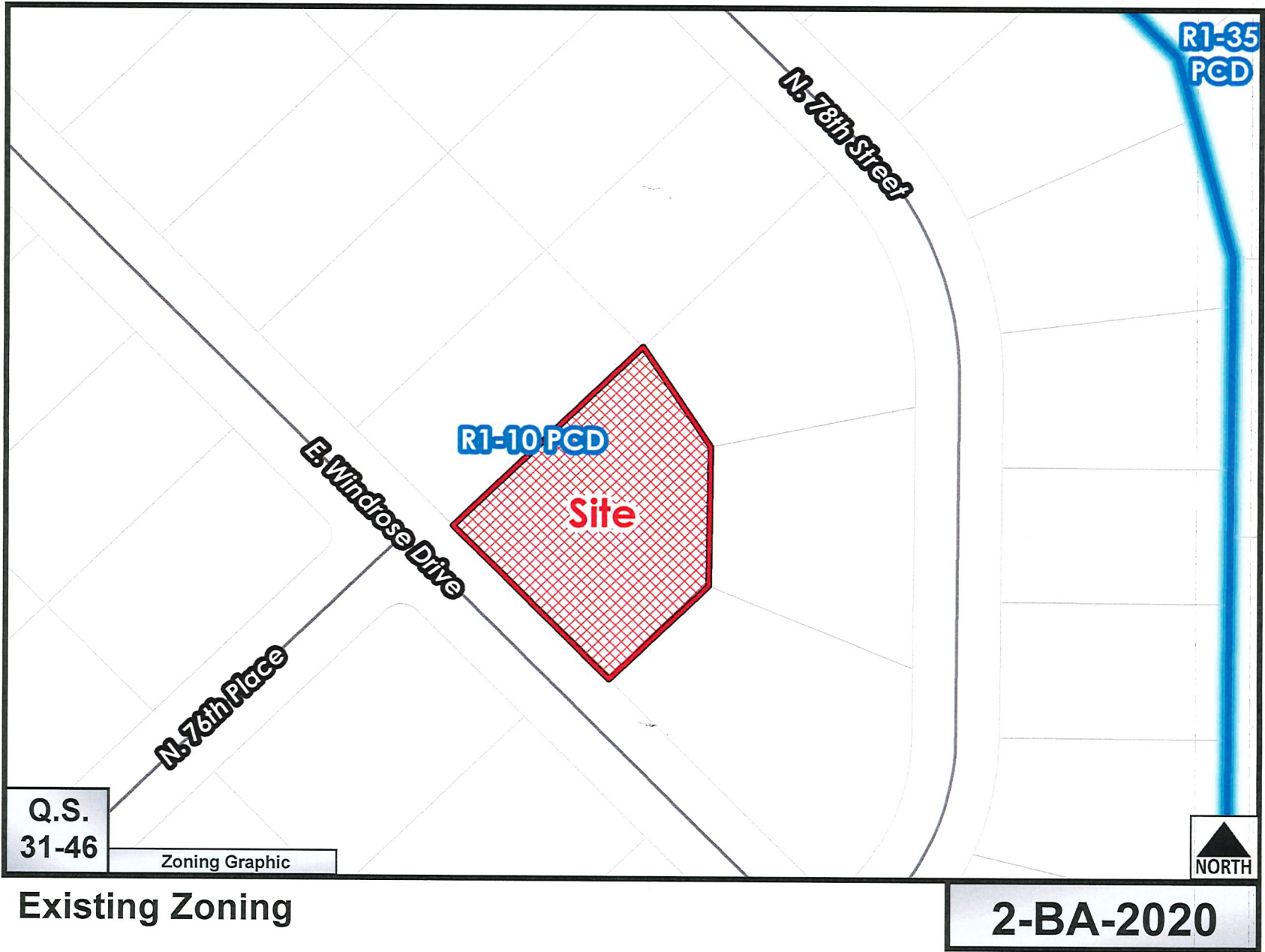
Q.S.
31-46

Google Earth Pro Imagery



Close-up Aerial

2-BA-2020



Q.S.
31-46

Zoning Graphic

Existing Zoning

2-BA-2020





Attachment 5

2-BA-2020
1/22/2020



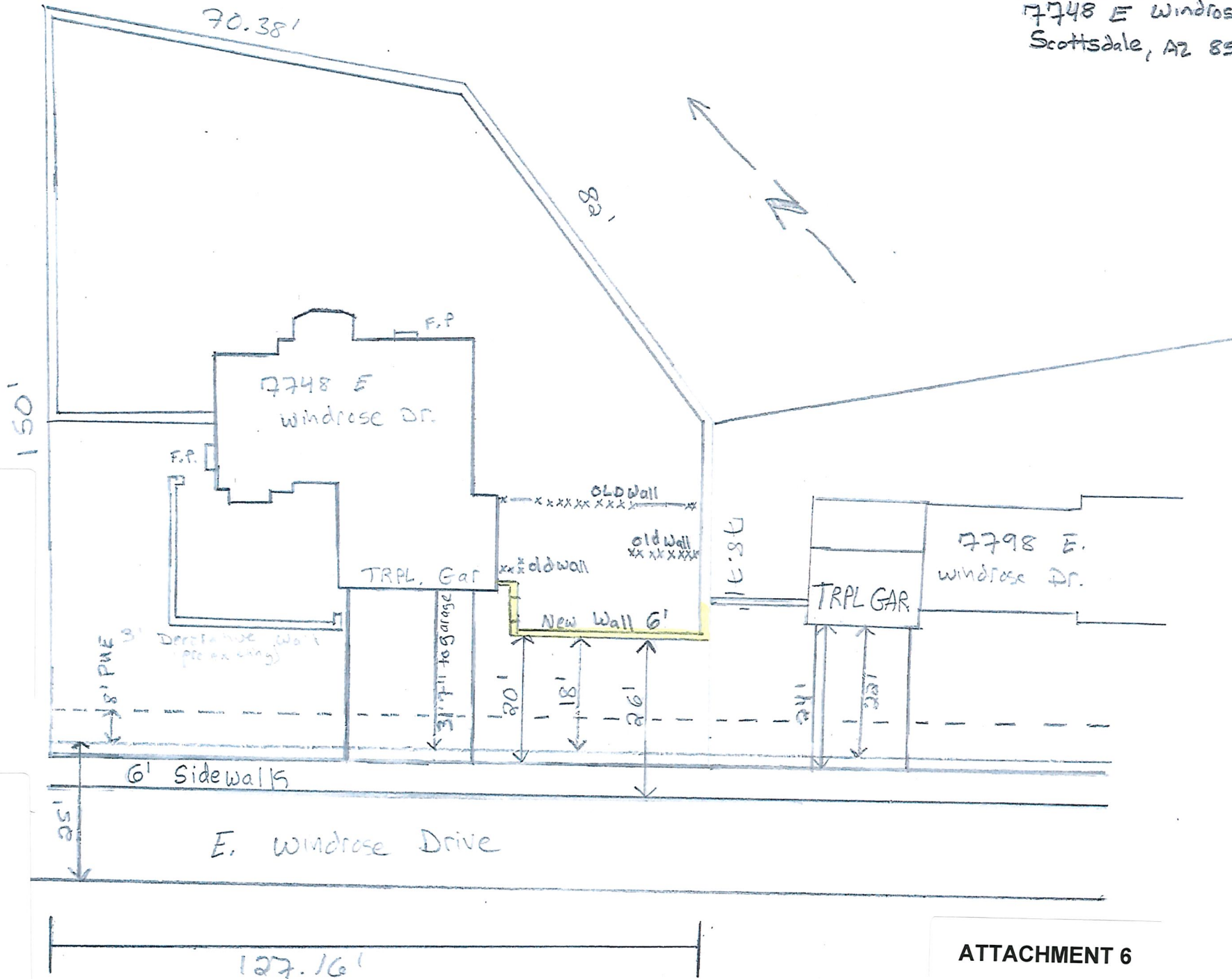
2-BA-2020
1/22/2020





LOT 332 Buonavante 2 APN: 175-10-226

Site Plan
7748 E Windrose Dr
Scottsdale, AZ 85060



ATTACHMENT 6

January 15, 2020

RE: Support for variance approval

To Whom It May Concern:

This letter is in regard to the front yard wall height variance requested by my neighbors, Dan & Angela Zufall, for their property at 7748 E Windrose Drive, Scottsdale, AZ 85260.

I own the property at 7765 E Windrose Drive, Scottsdale, AZ 85260 directly across from their property, and across from the proposed wall subject to this variance. I am in full support of approval for this variance to allow the front yard wall to be built higher than the 3' limit within the 30' setback as they have proposed, and I certainly do not feel their proposed new wall height of 6' would negatively impact my property or our neighborhood in any way.

It is my hope that you will grant their approval as requested, and know that they have made extensive efforts to remodel and improve the exterior of their home with quality materials, design, and appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kyle Freese', with a long horizontal flourish extending to the left.

Kyle Freese, PhD, MPH

7765 E Windrose Drive
Scottsdale, AZ 85260

Fence/Wall on Common Property Line Neighboring Property Owner Authorization



Authorization is required to be signed by all affected property owners.

Applicant Name: Dan Zufall
Applicant Address: 7748 E Windrose Drive, Scottsdale, AZ 85260
Subject Property Address: 7748 E Windrose Drive, Scottsdale, AZ 85260

I hereby authorize my neighbor (above) to construct a fence/wall on our common property line. I acknowledge that the construction of such wall will require footings that extend into my property and that workers will require access to my property during construction.

Neighbor Name (please print): Kevin Turko
Neighboring Property Address: 7798 E Windrose Drive, Scottsdale, AZ 85260
Neighbor Signature: [Signature] Date: Dec 4, 2019

Maintenance of the fence/wall will be the responsibility of:

- Both property owners jointly
- Solely the responsibility of: _____

Neighbor Name (please print): _____
Neighboring Property Address: _____
Neighbor Signature: _____ Date: _____

Maintenance of the fence/wall will be the responsibility of:

- Both property owners jointly
- Solely the responsibility of: _____

Neighbor Name (please print): _____
Neighboring Property Address: _____
Neighbor Signature: _____ Date: _____

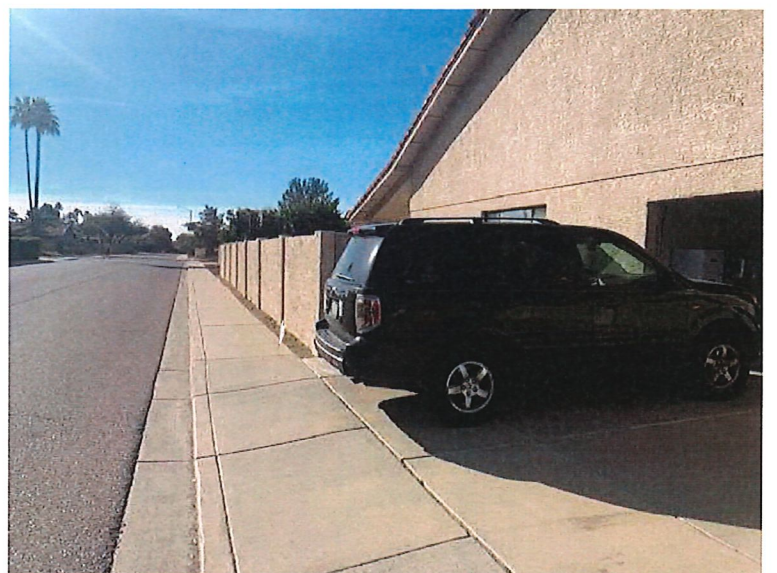
Maintenance of the fence/wall will be the responsibility of:

- Both property owners jointly
- Solely the responsibility of: _____

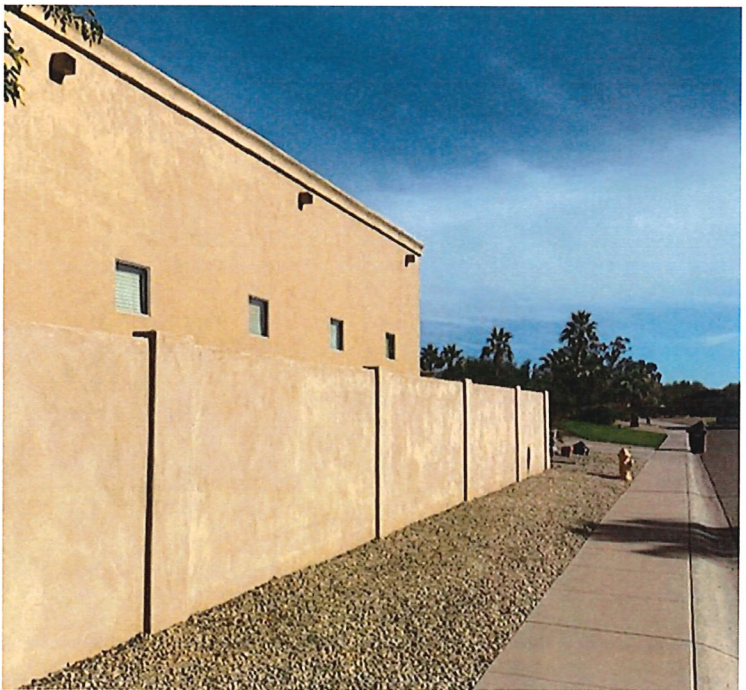
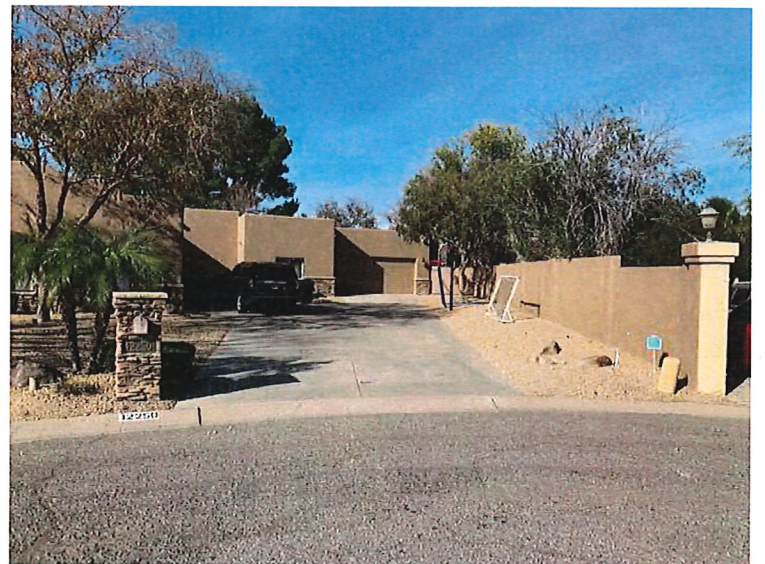
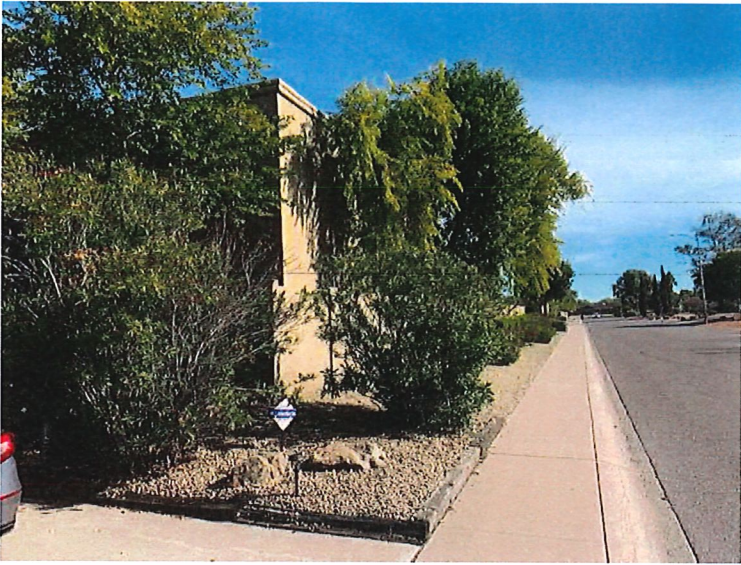
Planning & Development Services Department
7447 E Indian School Road Ste 105, Scottsdale, AZ 85251 • www.ScottsdaleAZ.gov

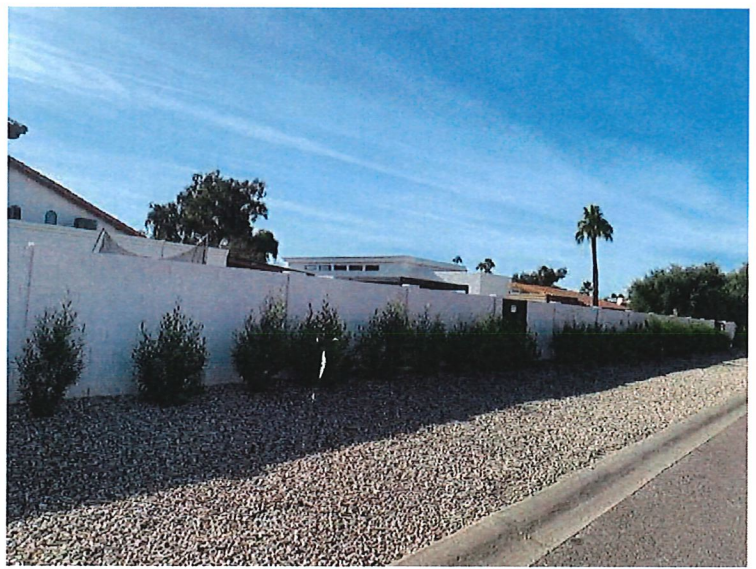
Buenavante 2 – Sample Photos of Neighborhood



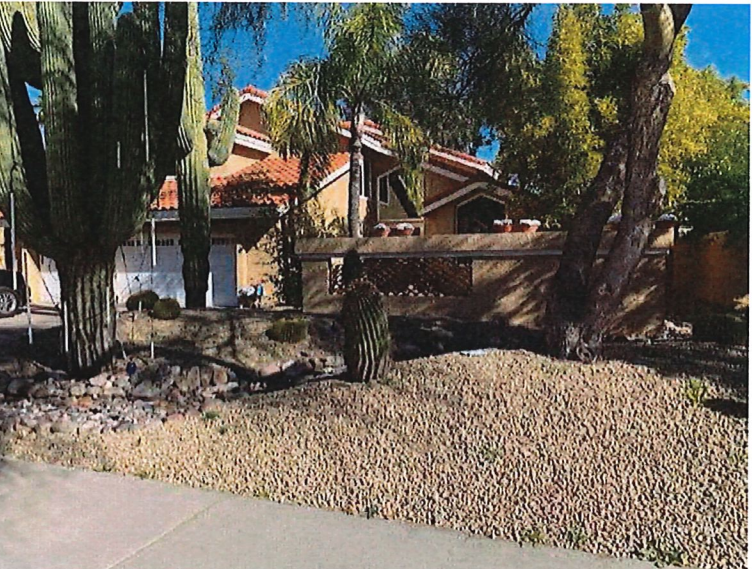












From: [Ruenger, Jeffrey](#)
To: [Smailbegovic, Omar](#); [Carr, Brad](#); [Berry, Melissa](#)
Subject: FW: Case Number : 2-BA-2020
Date: Friday, February 14, 2020 4:19:41 PM

From: [REDACTED]
Sent: Friday, February 14, 2020 2:23 PM
To: Projectinput <Projectinput@Scottsdaleaz.gov>
Subject: Case Number : 2-BA-2020

⚠ External Email: Please use caution if opening links or attachments!

I am writing regarding the "new" proposed project at the Zufall residence. I was shocked when I first saw how far in front of the property the new wall protruded. I could not understand how this was ever approved. Now it makes sense -- it was never approved! The wall extension is ugly and offensive and very much needs to be modified. For the benefit of the neighborhood, please have this wall modified even though the project has been completed.

Thank you.

From: [Ruenger, Jeffrey](#)
To: [Smailbegovic, Omar](#); [Carr, Brad](#); [Berry, Melissa](#)
Subject: FW: Project Number 2-BA-2020
Date: Friday, February 14, 2020 4:20:22 PM

From: William <azbiscuitlover@hotmail.com>
Sent: Friday, February 14, 2020 2:56 PM
To: Projectinput <Projectinput@Scottsdaleaz.gov>
Subject: Project Number 2-BA-2020

⚠ External Email: Please use caution if opening links or attachments!

I am opposed to the proposed zoning variance at 7748 E Windrose Dr. The new wall is unsightly and need to be moved back. On behalf of the neighbors, please do not allow the wall to stand as currently constructed.

Thank you,

A Concerned Neighbor