

BOARD OF ADJUSTMENT, City of Scottsdale

Justification for Variance

Property: 10651 E. Cactus Road, Scottsdale, AZ 85259

Property Owners: Darryl and Martha Smith

Type of Variance requested:

I. Variance to allow a 5-foot-high fence, comprised of 3-feet of block wall (bottom section); and 2 feet of steel view fence (top section), for an overall fence of 5 feet high (**PIC #1**). The fence faces Cactus Road. Approximately half of the property's front fence already exists as described above (combination of block/steel view fence). If Variance is granted, the remaining half of the fence, which is solid block wall, 5 feet high (**PIC #2**), would be redone to match the above block/steel fence.

-- We are requesting a Variance for the **top 2 feet of steel, see through, view fence** for the front yard facing Cactus Rd.

II. Variance to allow approx. 6-foot solid block wall (all 4 sections are under 6 feet high) on the West side of the property (40 feet into the property) to match the East side allowed thru the existing Neighbor's Variance (**PIC #3**).

-- We are requesting a Variance for the **top 3 feet of solid block West wall** (shared w/next door neighbor, 40 feet into the property).

NOTE: Z.O. Sec. 5.104.G states walls, fences and hedges shall not exceed 3 feet in height on the front property line, or within the required front yard (40 feet).

- 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; and***

Our property has similar issues and drawbacks as described in the Variance issued to our next-door neighbor (East adjacent property @ 10705 E. Cactus Road), which involves City Stormwater Culvert Pipes running across Cactus Road, and ending at each of our properties.

The natural topography and drainage from Cactus Road creates a special condition in which the wall height on our property is effectively less than the actual height of the wall itself, there is also an additional burden caused by the City stormwater drainage Culvert Pipes from Cactus Road into our property. We respectfully request an exception to the existing 2-foot view fence so that we can have the similar safety, privacy and screening as other property owners.

The existing 2 feet high iron view fence facing Cactus Road, and more specifically in the area where the Culvert Pipes connect to our property provides our family and small children with some security from anyone climbing the 3-foot wall from the inside of our property, and falling into the very high open concrete trench (**PIC #4**). This open concrete trench is 8 feet, 4 inches deep from the top of the 3' block wall to the bottom (**PIC #6**). This is a serious safety concern for our family and small children.

There are 3 Culvert Pipes that run underground, across Cactus Rd., and end directly to the right of our East Gate facing Cactus Rd. **(PIC #4)**. These underground pipes have caused Cactus Road to be at a higher elevation than where our front fence is located, resulting in uneven ground levels along the fence. The ground where the front fence is located curves or slopes down in some areas, affecting the height of the front fence.

The Variance issued to our next-door neighbor is for a solid block wall, 6 feet tall, along Cactus Road. We are requesting a Variance for 2 feet of viewable, see through iron fence on top of the existing 3-foot block wall **(PIC #1)**.

Our property is being used to deviate COS stormwater flow from Cactus Road to the back neighboring properties. At the end of 2022 the City of Scottsdale requested we install 2 very large Culvert Pipes, underground, through the middle of our property for the only purpose of continuity of the COS storm water flow process **(PIC #5)**. This request was completed in 2023. This project was very intense and costly, and involved disassembling the East gate and redoing a section of the same wall currently in question, where the City Culvert Pipes were installed, as well as removing half of our paver driveway.

In addition, traffic on Cactus Road is constant and heavy. Because of the elevation on Cactus Rd., noise is louder than normal. This is not a regular neighborhood, but a well-travelled commercial road. There are Pedestrians at all times of the day and night. The area in front of the fence is used for Horses. Although the speed limit is 35 mph.....the speed of traffic is much faster.

- 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 location; and**

Not having a taller fence would deprive us from enjoying the same privileges as our next-door neighbor with the existing Variance, and with similar City stormwater Culvert Pipe and elevation issues as our property. In addition, the authorization of the variance is necessary for the preservation of safety privileges, and full use of our land, as enjoyed by other properties that don't have City stormwater trenches a few feet from their front door, affecting their safety and daily way of life.

We believe we are doing our part to support the City's Stormwater Process, and doing so, should not create a safety concern for our family. We should not have to create new walls to protect our family from City stormwater trenches, thus restricting us from the full use of our property.

Unlike our neighbor with the Variance for a solid 6-foot block wall, our request is for only 2 feet of viewable, see-through iron fence.

3. That the special circumstances applicable to the property were not self-imposed or created by the owner or application; and

The stormwater Culvert Pipes and Cactus elevation issues that caused the front fence to dip in some areas existed before we purchased the property in August 2022. The previous Owners disclosed to us that the City of Scottsdale had approved the Cactus fence, currently in question, as the actual "Pool Fence" (new pool was constructed in 2021). We believed it to be correct because the new pool had no fence around it, and COS pool permit had been approved and closed.

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 existing fence does not restrict any views and does not impact the current character of the street frontage. The existing fence is transparent with the ability to see through to our property rather than a solid wall. It allows our family some security while maintaining an open feel along Cactus Road for the neighborhood and community, and it is very consistent with the current aesthetic of Cactus Road.

Our wall is set well back from Cactus Road so there are no issues with view triangles or safety accessing the property from Cactus Road or accessing Cactus Road from the property. Our fence is not oppressive to the street view.

We absolutely love our neighborhood and are in process of improving the frontage road in front of our fence with City approved mature landscaping, including 60-inch box trees, plants, shrubs, etc., to better match the City of Scottsdale beautification project that was completed several years ago.

/ms