

BOARD OF ADJUSTMENT REPORT



Meeting Date: 2/3/2021

ACTION

Garcia Wall
17-BA-2020

Request to consider the following:

1. Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.504.G. pertaining to wall height within the required front yard setback for a property with Single-Family Residential (R1-7) zoning located at 8637 E Starlight Way.

OWNER

Catherine Garcia
(480) 228-1465

APPLICANT CONTACT

Catherine Garcia
(480) 228-1465

LOCATION

8637 E Starlight Wy

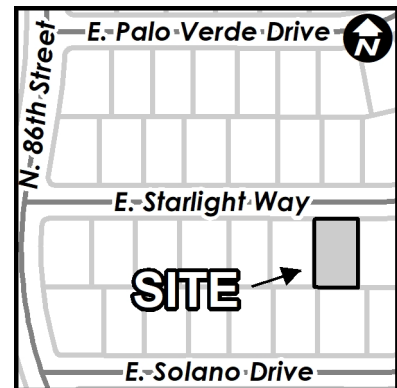
BACKGROUND

History

The subject site was annexed into the City of Scottsdale in October of 1961 through Ordinance No. 130, and the City of Scottsdale R1-7 zoning standards were applied. This property is lot 729 of the Park Scottsdale Four subdivision which was platted and recorded in Maricopa County in 1961. Two fence permits have been issued on this property for the existing perimeter fences outside the front setback; one in December 2018 and the other in June 2007.

Zoning/Development Context

The subject site is zoned Single-family Residential (R1-7) and is located on E. Starlight Way, south of East McDonald Drive.



Zoning Ordinance Requirements

Pursuant to the City of Scottsdale Zoning Ordinance Section 5.504.G, pertaining to walls, fences, and hedges: "Walls, fences and hedges with a maximum height of three (3) feet are allowed on the front property line or in the front yard. However, walls, fences and hedges with a maximum height of six (6) feet are allowed in the front yard if: a. Not more than forty (40) percent of the front yard set forth in E. above is enclosed, and b. A minimum setback of three (3) feet from the front property line is provided."

The applicant is requesting a variance of eleven (11) inches to allow a six (6) foot tall wall within the required twenty (20) foot front yard setback at two (2) feet, one (1) inch from the front property line.

Code Enforcement Activity

Code Enforcement issued a compliance notice on January 22, 2019 for work done without permits. The applicant states the front yard wall was erected in 2001.

Community Input

City of Scottsdale hearing postcards were sent to properties within 750 feet of the subject site. As of the writing of this report, staff has received one written letter in opposition to the request.

Discussion

The existing six-foot block wall was built two feet, one inch from the front property line without permits. The applicant is requesting the variance with the intent to legalize the existing non-conforming wall so it can remain in its location. If the applicant lowers the existing six (6) foot wall to three (3) feet, the wall can remain in its location and the applicant can build a six (6) foot wall behind the three (3) foot wall if desired.

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 that when this neighborhood was originally developed in 1962, traffic was minimal crime was less of a factor, and people were more open at that time. The applicant further states there are many more crimes in residential areas than ever before and the wall provides privacy and security. The applicant claims that without the wall, they will no longer feel safe or comfortable to garden, enjoy the front yard area, or leave their dogs out.

Staff Analysis:

The subject property is approximately 6,961 square feet and is smaller in size than the 7,000 square foot minimum lot size for R1-7 zoned parcels. The shape and topography, however, is similar to other properties in the Park Scottsdale Four subdivision and other properties in the R1-7 zoning district.

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 there are other properties in the neighborhood with courtyard fences, and they have included photos of properties in the neighborhood attached to this staff report.

The applicant states the courtyard wall has allowed them to utilize the front part of the property, plant a garden, and allows them to let their dogs in the front part of the yard without escaping onto the busy street. The applicant emphasizes that the wall allows them to enjoy their front yard in privacy and without worry.

Staff Analysis:

The R1-7 zoning district standards allow walls, fences and hedges with a maximum height of three (3) feet on the front property line or in the front yard. Walls, fences and hedges with a maximum height of six (6) feet are allowed in the front yard if: a. Not more than forty (40) percent of the front yard is enclosed, and b. A minimum setback of three (3) feet from the front property line is provided. This wall encloses less than the 40% maximum allowed. The applicant is seeking a variance to allow a six-foot-tall wall at two feet, one inch from the front property line. Although it is merely eleven inches from the standard, it does not appear that any other lots within the area have walls taller than three (3) feet closer than three (3) feet from the front property line.

If the applicant lowers the existing six (6) foot wall to three (3) feet, the wall can remain in its location and the applicant can build a six (6) foot wall behind the three (3) foot wall if desired.

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 the backyard does not have extra space for their dogs to run around and enjoy the yard because of a pool. The swimming pool was installed when the house was

built in 1962, the yard design was ok based on the kind of traffic and population at that time. The population has increased since the 1960's, traffic is much heavier, and there is much more crime in the area than ever before. The applicant claims there are reports of coyotes in the area due to houses being built in the coyotes' natural habitat. The applicant additionally claims there are registered sex offenders in the neighborhood, which is not self-imposed or created by the applicant. The applicant states none of those items were self-created.

Staff Analysis:

The subject property is approximately 6,961 square feet, which is smaller than the 7,000 square foot minimum lot size but is similar in size and topography to other properties in the Park Scottsdale Four subdivision and other properties in the R1-7 zoning district. The applicant did not establish the existing lot size. The wall was constructed without permits in 2001.

- 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 the wall has been up for almost 30 years and they have never had a neighbor complain about the wall. The original neighbor who had the wall constructed on the east side of the property moved several years ago and the new owners do not have an issue with the wall. The applicant has had many people stop by throughout the years to compliment the cactus garden and the wall. The applicant has provided photos attached to the staff report of the wall.

Staff Analysis:

The authorization of the variance does not appear to be materially detrimental to persons residing in the neighborhood or the public welfare. However, there was a complaint that generated the code enforcement action.

SUMMARY

Based on the facts presented by the applicant, the evidence would support a finding that the property may have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size is smaller than the minimum lot size in the district, but the shape, topography or configuration of the property is not unique and applicable. 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.

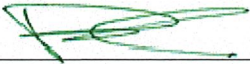
APPROVED BY



Desirae Mayo, Report Author
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1/14/2021

Date



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1/14/2021

Date



Tim Curtis, AICP, Current Planning Director
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1/18/2021

Date



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Executive Director
480-312-2664, rgrant@scottsdaleaz.gov

1/19/21

Date

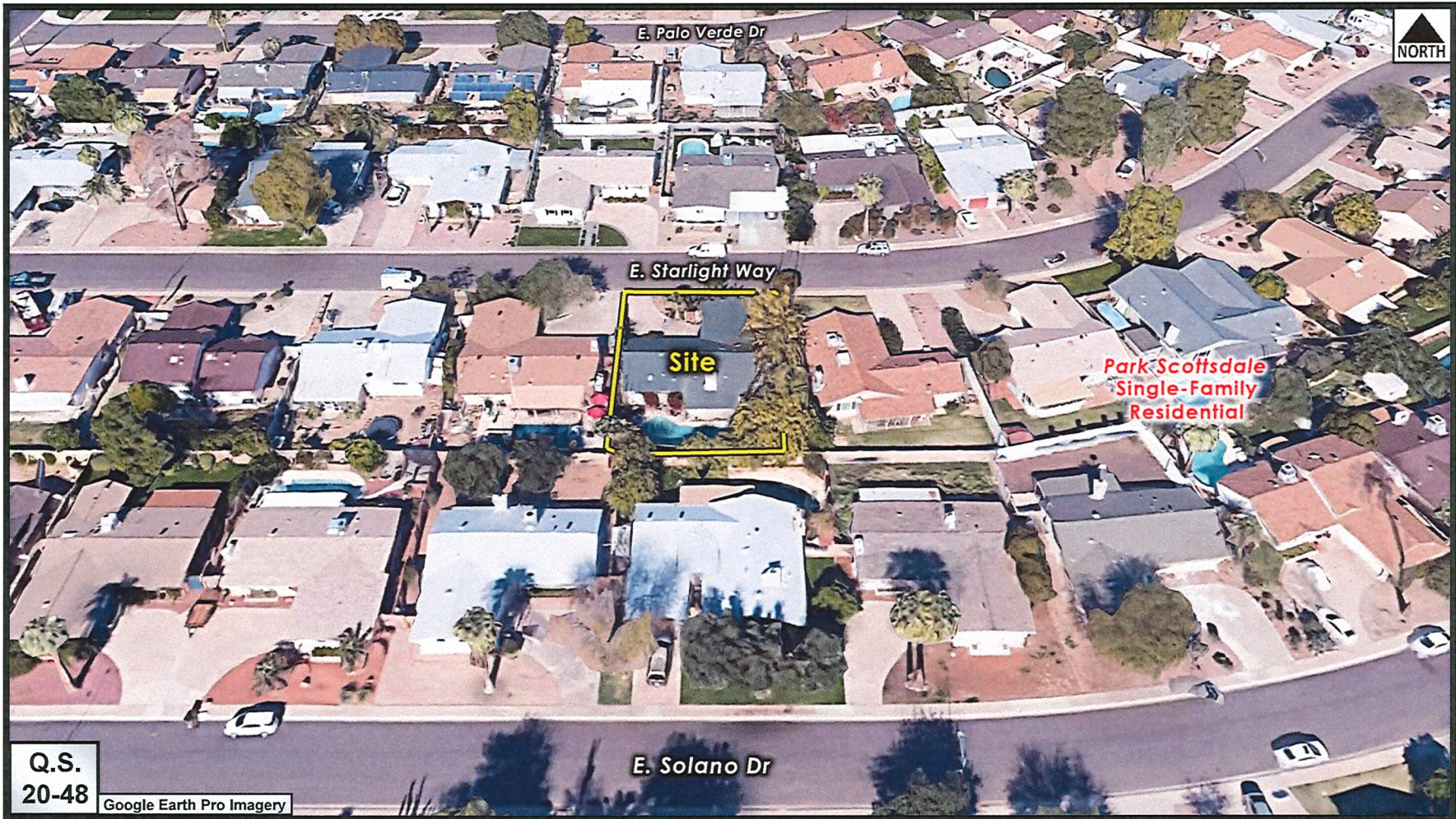
ATTACHMENTS

1. Context Aerial
2. Aerial Close-Up
3. Zoning Map
4. Project Description
5. Applicant Justification and Photos
6. Site Photographs
7. Site Plan
8. Public Comment



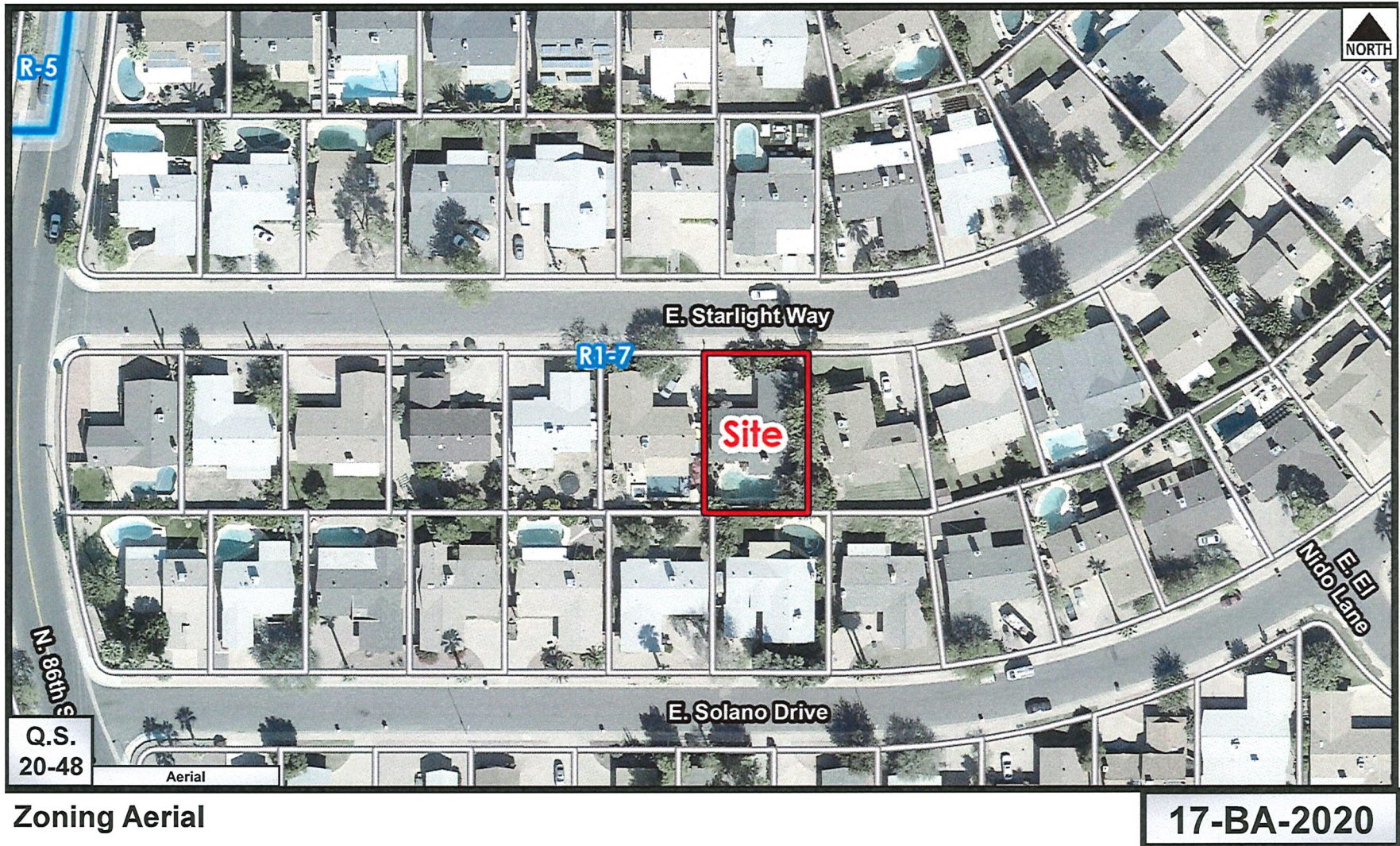
Context Aerial

17-BA-2020



Close-up Aerial

17-BA-2020



Variance Request for Wall height & front yard Setback

Case Number: 17-BA-2020

Case Name: Garcia Variance Approval Request

My name is Catherine Garcia, I reside at 8637 E. Starlight Way, Scottsdale, AZ. 85250. I am requesting a variance for wall height and front yard setback. I moved into the house in May of 1989 as a renter and purchased the home in June of 1990, I am a single Senior Citizen woman who lives alone. The wall was built in 1991 and organized by my neighbor to the east of me at that time, Joyce Redner. She wanted to put a 6-foot wall up between our properties and because the wall was on the property line, she needed my permission. Once the contractor came out and discussed the process, I asked about adding a wall facing North, I was told it had to be 3 feet behind the sidewalk, so I had the "Courtyard wall" constructed at that time. I had an RV gate added as well so I can park a vehicle on the property or utilize for moving large object into or out of the property. Since the wall construction was organized by my neighbor I did not get involved with the paperwork, only to sign a document agreeing for the wall to be put up on the property line, I simply paid her for half of the cost of the wall between our properties.

The wall was constructed, and I proceeded to plant cactus on the North side of the wall as I was advised it would be a great deterrent for anyone trying to get onto the property and cactus required very little care and water. In the 29 – 30 years that this wall has been there I have received many compliments on the cactus garden and the wall, I have never received any negative feedback from neighbors around me.

In 2006 I hired a professional surveying company to survey my property to identify my property lines. In 2007 I hired a contractor to build a fence between my property and the property to the west side of me. I obtained a permit and the contractor put up the wall, etc. There had not been any issues with the wall until 2017. I had a new neighbor move into the house on the west side of my property in 2016. In 2018, the neighbor accused me of having the wall put up 2 feet on his property. In March of 2018, I received a notification from the Scottsdale Code Enforcement that the wall on the west side of the property did not have a permit. After further investigation I identified that although a permit had been obtained there was not a final inspection performed by the city of Scottsdale. In working with the various departments, planning, permitting, etc. I was able to hire a professional certified structural engineer, who performed a Site Wall Investigation. The engineer utilized a HR Rebar locator to identify the vertical reinforcing rebar in all pilasters, he verified that the wall was put up to code. I also had the footing area dug up to allow the inspector to inspect the footings. I re-applied for a permit based on direction from the planning department, with the Inspectors and the Engineering report, I was able to have the wall permitted (permit #247996) and is now legal.

In September of 2018 I received a new Code Enforcement violation on the Courtyard wall, the neighbor to the west of me filed a report against me on the Courtyard wall for no permit. There was no reason for the neighbor to file anything with the City of Scottsdale as the Courtyard wall is east of the driveway and isn't even close to the neighbor on the west. He was simply harassing me as he has done since he moved in. I again went to the planning department and asked if I could do the same thing that I had done with the west wall, hire a certified Structural Engineer and have the wall evaluated, dig up the footers for inspection and obtain a permit. While getting the paperwork completed it was identified

that the wall was 11 inches outside of the permitted setback. When the contractor who put the wall up measured, they started at the edge of the sidewalk instead of a foot back. I once again hired and paid the Engineer \$600 who did the Site Wall investigation (see attached), I applied and paid \$170.22 for a permit. I obtained the permit, however, after further discussion with the planning team was advised that I needed to take care of the setback issue first. I was also advised that I could apply for a Variance request and until the variance request is handled, I couldn't move forward with the fence permit. The engineer states that the wall construction meets the requirements of the International building Code, no signs of distress in the wall was detected and the wall will continue to perform as required.

This variance request is to obtain a variance on the 11" required on the front yard setback to allow me to keep the 6' fence in the current location. If this variance is not approved, I will be required to take the wall down to 3', I will no longer be able to allow the dogs to play out in the front yard and will no longer be able to enjoy the privacy the wall provides me in the front courtyard. In the springtime I always plant a garden and do not worry about anything because I feel secure with the wall.

If the variance is approved, I can move forward with the permit request, utilize the Engineering Site Wall Investigation and obtain the permit for the wall and the wall would then be legal. I will be able to enjoy the property and the security the fence provides me and my dogs.

Side note on neighbor to the west of me, he has filed various things against me with Code enforcement, many have been false complaints, he went on to file an Injunction against harassment against me in 2018, I disputed the filing and it was dismissed in October of 2018. I just want to live peacefully on my property and have done so for the last 30+ years. This wall helps with my privacy and safety.

Thank you for your consideration with this request, I have lived in Scottsdale since I moved here in 1989 and want to follow the rules as stated. I have paid all property taxes and am a law abiding citizen.

Kind Regards –

Catherine Garcia

Board of Adjustment – Zoning Variance Project Narrative

- 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 houses were constructed in Park Scottsdale in 1962 at that time traffic was minimal and was a new development, crime was most likely not a huge factor and people were more open at that time. These statistics have changed quite a bit in the last 59 years and there are many more crimes in residential areas than ever before. The wall provides privacy and security, without the wall I will no longer feel safe or comfortable to garden or enjoy the front yard area or leave my dogs out

- 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.**

There are other properties that have courtyard fences, I have included photos from properties in the neighborhood.

The courtyard wall has allowed me to utilize the front part of the property, I am able to plant a garden and the wall allows me to let my dogs to be out in the front part of the yard without being able to get out onto the busy street. I am a Senior Citizen female who lives alone and am able to enjoy my front yard in privacy and without worry.

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

The backyard of the property has a swimming pool that utilizes most of the yard, there is not too much extra space for my dogs to run around and enjoy the yard. The swimming pool was installed when the house was built in 1962, the yard design was ok based on the kind of traffic and population at that time. The population has increased from the 60's to now, the traffic is much heavier and there is much more crime in the area than ever before. I have included Crime statistics from the City of Scottsdale website.

There is also many reports of coyotes in the area due to houses being built in the area and taking away their natural habitat.

There are also registered sex offenders in this neighborhood which is not self-imposed or created by me.

None of these items were created by me the owner.

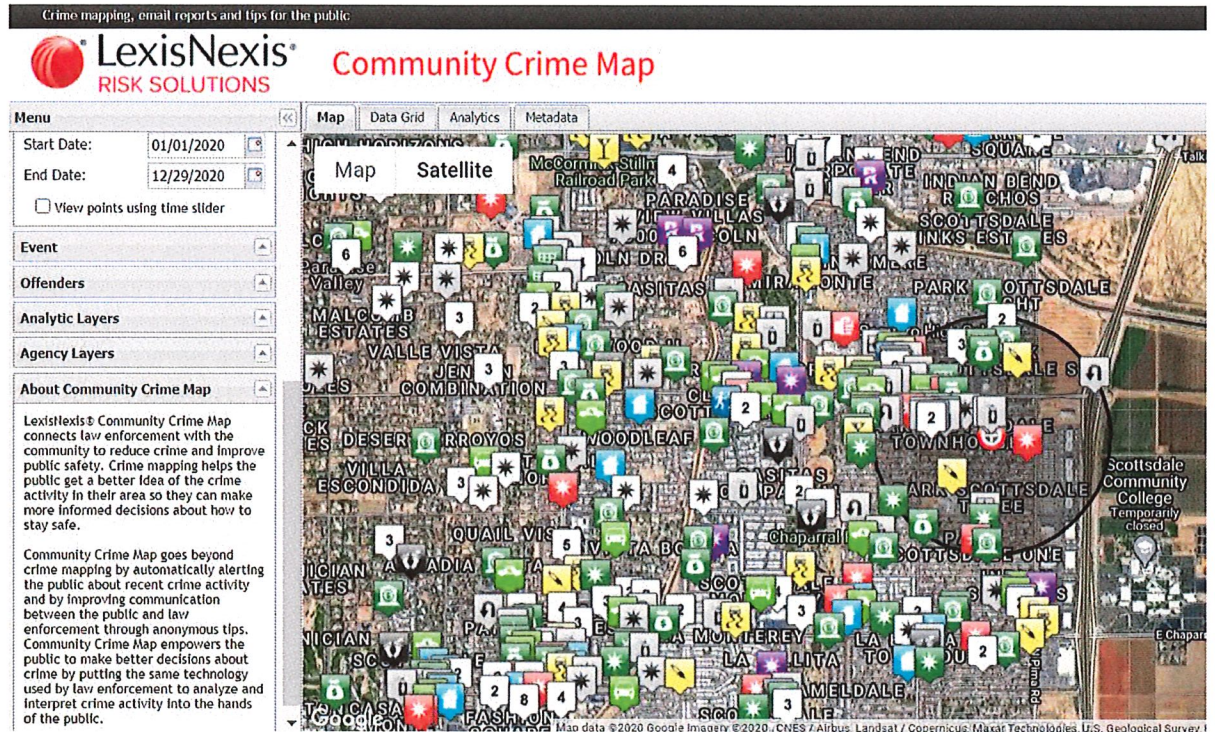
- 4. That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.**

This wall has been up for almost 30 years, I have never had a neighbor complain about the wall, the original neighbor who had the wall constructed on the East side of the property moved several years ago and the new owners do not have an issue with the wall. I have had many people stop by throughout the years to compliment the cactus garden and the wall.

Photos have been provided.

Crime information:

LexisNexis information was provided by City of Scottsdale Crime Statistics – the circled area reflects crimes within .5 miles around my property, the date range is from January 1st 2020 to December 29th 2020. The Crime Analysis Unit provides statistical information in 3 different areas: Administrative, Strategic and Tactical.



South Scottsdale, Scottsdale, AZ Crime

Follow

Overview

Livability

Real Estate

Rentals

Demographics

Neighborhoods

Livability
74

Livability

A+

Amenities

D

Cost of Living

C-

Crime

B-

Employment

D

Housing

F

Schools

A-

User Ratings

C-

Total crime
37%↑
NAT. AVG.Violent crime
25%↓
NAT. AVG.Property crime
49%↑
NAT. AVG.

Find Homes

Find Rentals

Date & Last Updated: This data reflects the 2019 calendar year and was released from the FBI in September, 2020; this is the most current data available.

Statistic	South Scottsdale /100k people	Scottsdale /100k people	Arizona /100k people	National /100k people
Total crime	3,421 (estimate)	2,117	2,896	2,489
Murder	n/a	1.2	5.0	5.0
Rape	n/a	52.2	50.3	42.6
Robbery	n/a	42.2	88.1	81.6
Assault	n/a	63.7	311.9	250.2
Violent crime	283 (estimate)	159	455	379
Burglary	n/a	254.2	394.3	340.5
Theft	n/a	1,602.1	1,796.9	1,549.5
Vehicle theft	n/a	101.4	249.4	219.9
Property crime	3,138 (estimate)	1,958	2,441	2,110

Crime data for this area is not available from the FBI, so estimates are used based on demographic data including, but not limited to: home prices, income per capita and population density



Applicant Provided Neighbor Photos



Applicant Provided Neighbor Photos



Applicant Provided Neighbor Photos



Applicant Provided Neighbor Photos



Applicant Provided Neighbor Photos



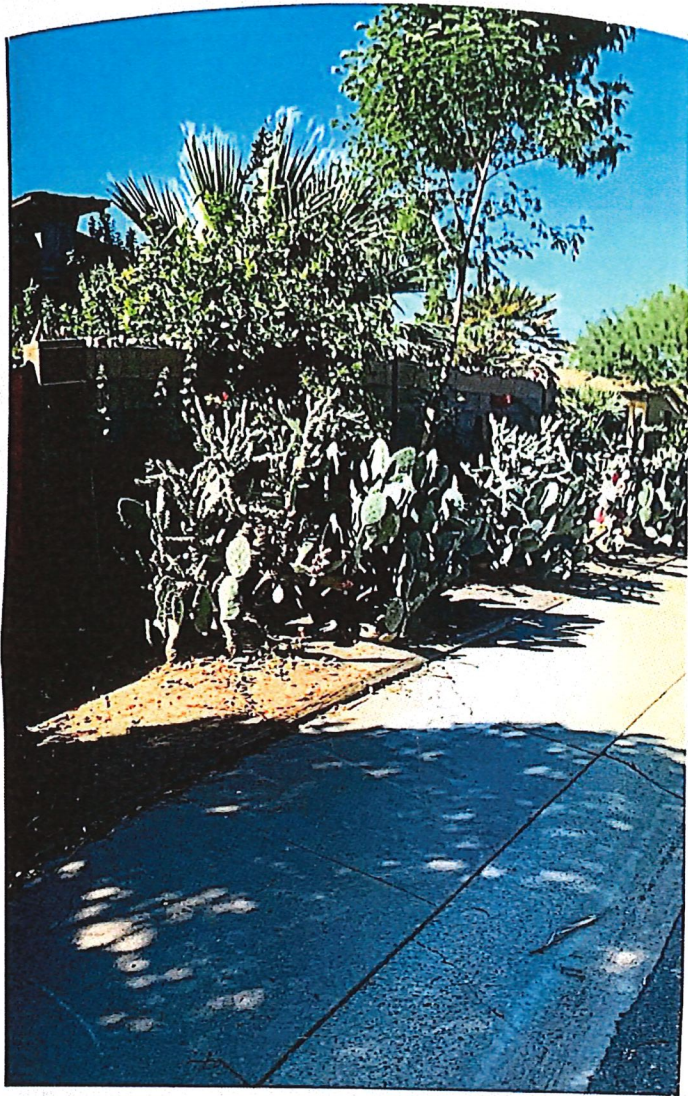
Applicant Provided Neighbor Photos



Applicant Provided Neighbor Photos



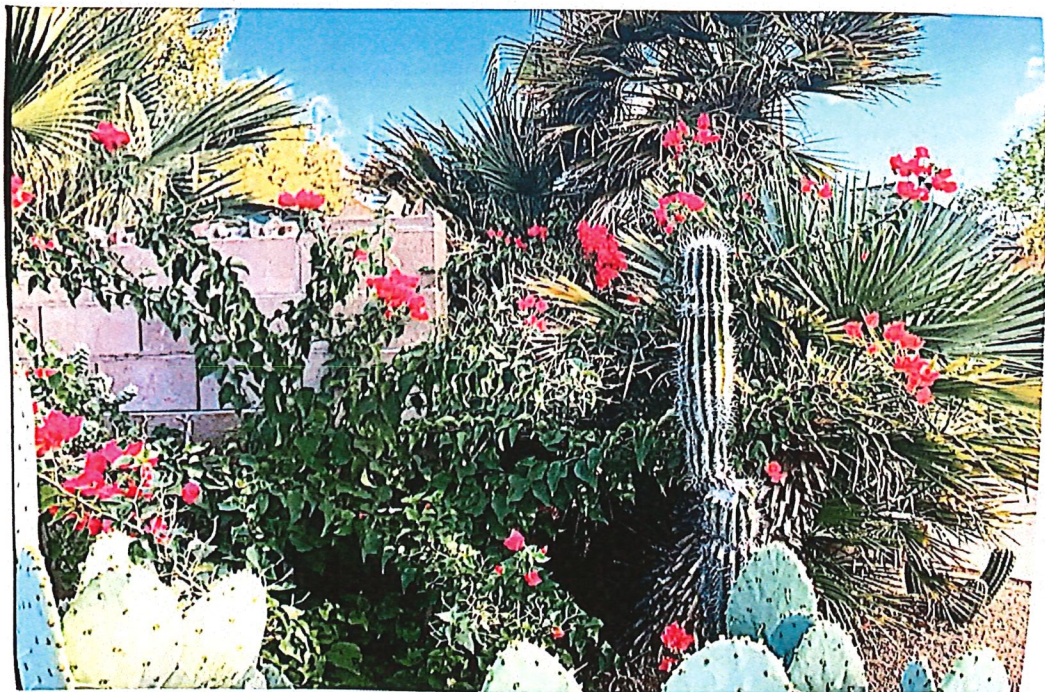
Applicant Provided Neighbor Photos



8637 E Starlight Way
 Scottsdale, AZ 85250
 Catherine Garcia

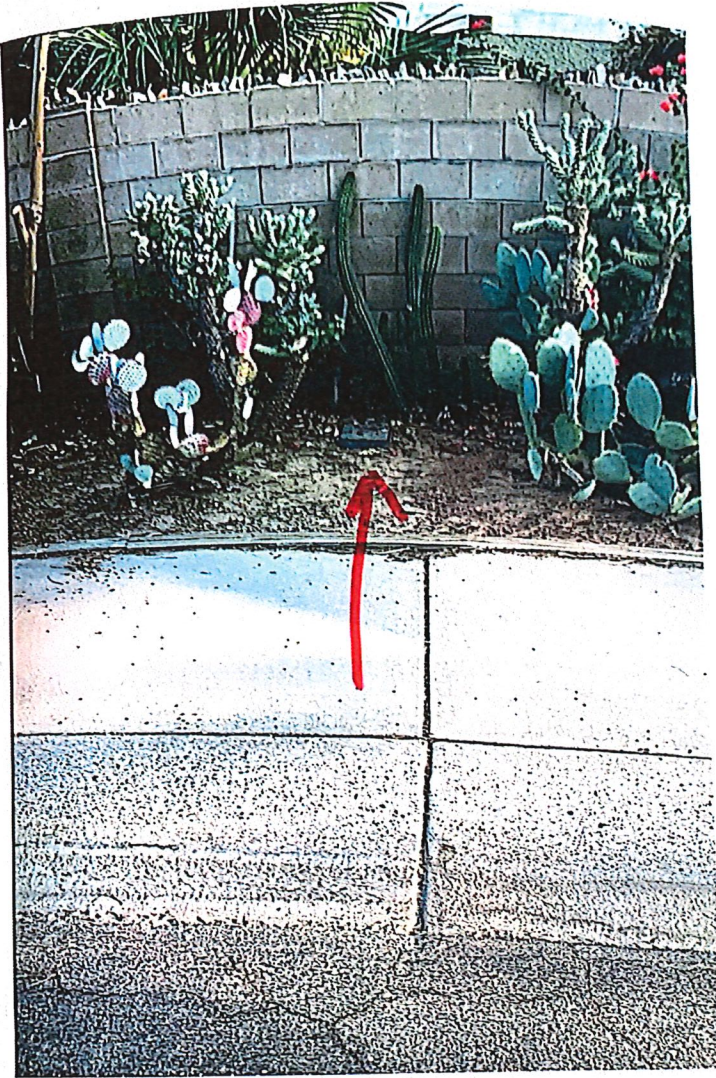
View of wall facing
 West

View of
 Wall North
 West corner



Catherine Garcia
8637 E Starlight Way
Scottsdale AZ 85280

View of Water Meter
Access



View of
Wall looking
East



Catherine Egan
480 228 1465

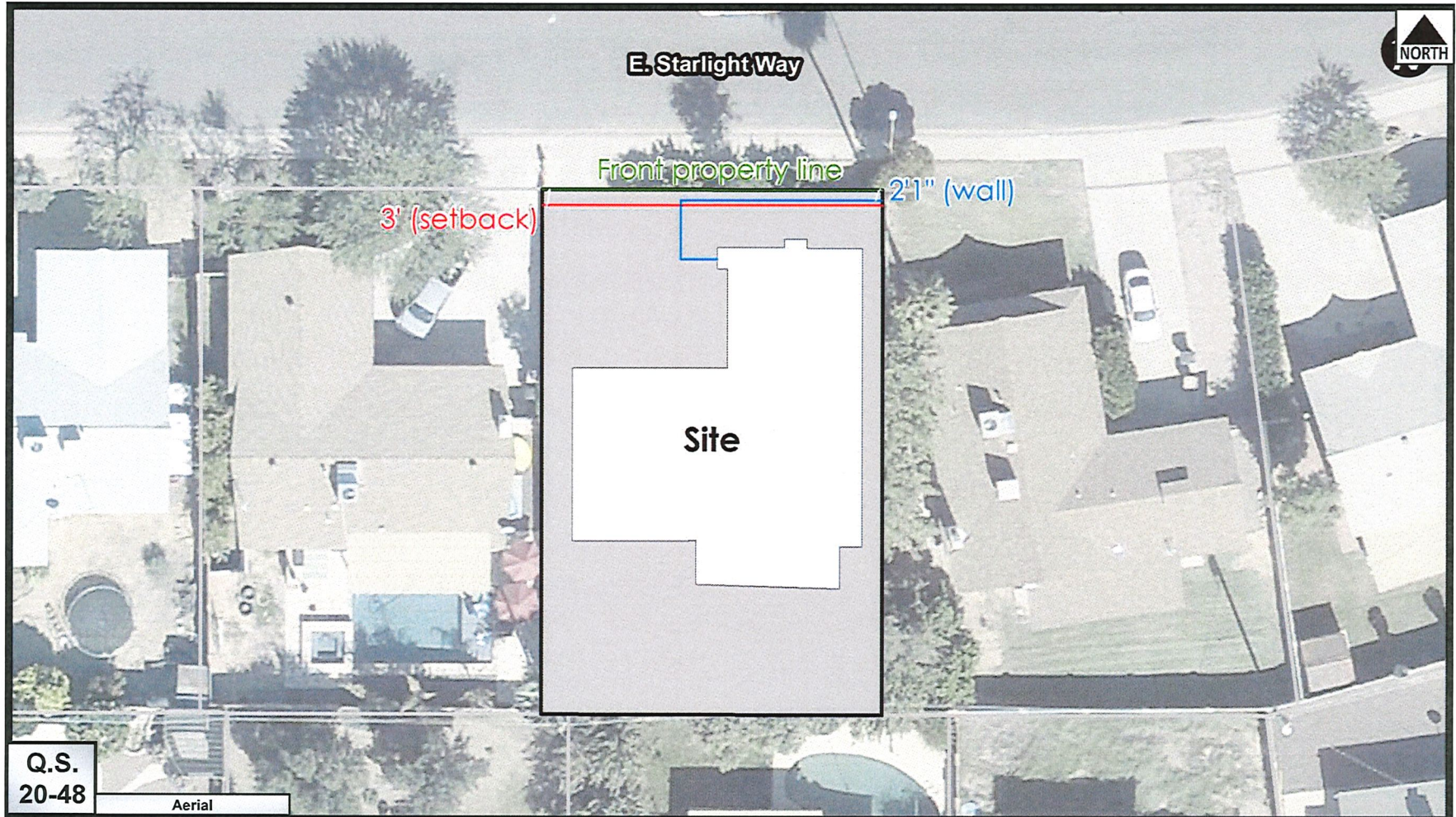
8637 E Starlight Way
Scottsdale 85250



View of
Wall



Front View of Wall - arrow
points to water meter.



Site Plan

17-BA-2020

From: [NoReply](#)
To: [Mayo, Desirae](#)
Subject: 17-BA-2020
Date: Saturday, January 2, 2021 9:58:41 PM

City of Scottsdale



Hello, As concerned neighbors we dont want the variance approved for this wall. Its unsafe was built with NO permits or Inspections. Enclosing too much of the front yard per City of Scottsdale code. It needs to be taken down, moved back & built to the correct height and only enclosing the allowed amount of the front yard. It also needs to be built with the proper permits & inspections for the safety of the neighborhood. Please let me know if we all need to log on to the board meeting to say NO -- sent by Tommy Scott Pruet (case# 17-BA-2020)

City of Scottsdale



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