

# BOARD OF ADJUSTMENT REPORT



Meeting Date: 3/5/2025

## ACTION

**The Clark Residence**  
**2-BA-2025**

### Request to consider the following:

1. Request by applicant for a variance to the City of Scottsdale Zoning Ordinance, Section 5.204.G to allow a 6' tall wall within the required front yard setback adjacent to a key lot along North 85th Place for the property located at 8539 E Desert Cove Avenue, with Single-Family Residential R1-35 Zoning.

## OWNER

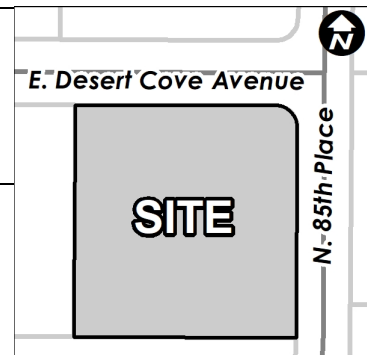
Wyndham Clark  
(602) 541-9223

## APPLICANT CONTACT

Shelby Crisman  
(480) 433-5623

## LOCATION

8539 E Desert Cove Ave  
Scottsdale, AZ



## BACKGROUND

### History

In 1962, the subject site was annexed into the City of Scottsdale and rezoned to Single-Family Residential R1-35 District. The existing primary residence was permitted in 2024 within the City of Scottsdale. Analysis of aerials indicated no other significant improvements other than the original home which was built in 1970, and recently demolished for construction of new home in 2024. The current property owner is requesting a variance of three (3) feet to allow a six (6) foot tall wall in the required forty (40) foot front yard setback.

### **Adjacent Uses and Zoning**

- North: Sundown Ranchos No. 2 subdivision, zoned Single-family Residential (R1-35)
- South: St. Patrick Roman Catholic Church, zoned Single-family Residential (R1-35)
- East: Sundown Vista subdivision, zoned Single-family Residential (R1-35)
- West: Sundown Vista subdivision, zoned Single-family Residential (R1-35)

### **Zoning/Development Context**

The site is zoned Single-Family Residential (R1-35). The R1-35 zoning district allows for single-family residential and ancillary uses.

The subject property is located southwest of the intersection of N 85<sup>th</sup> Pl and E Desert Cove Ave. This lot is surrounded by adjacent single family residential both directly to the north and east, as well as a Saint Patrick Roman Catholic Church directly abutting to the south, also zoned R1-35. The subject property shares a similar shape and size to the abutting R1-35 properties.

### **Zoning Ordinance Requirements**

Pursuant to Article V, Section 5.204.G. "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. Where a corner lot does not abut a key lot or an alley adjacent to a key lot, the height of walls, fences and hedges in the yard facing the longer street frontage need only conform to the side yard requirements:

*The applicant is requesting a variance of three (3) feet to allow a six (6) foot tall wall within the required front yard setback along the longer street frontage. The subject lot is adjacent to a key lot, requiring any wall above three (3) feet to be setback forty (40) feet from the property line outside of the required front yard setback.*

### **Code Enforcement Activity**

At the time of drafting this report, there have been no reported code enforcement activity for this site.

### **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 four public comments in support of this variance request, which can be found in Attachment 8.

## Discussion

The applicant is requesting approval to construct a new 6-foot-tall wall on the property line adjacent to N. 85<sup>th</sup> Place, which is the longer street frontage of the corner lot. Since the subject property is adjacent to a key lot, any walls within the 40-foot front yard setback are limited to 3 feet in height. The proposed wall consists of a solid block wall for approximately the southern 75 feet and then a 3-foot-tall block wall with a 3-foot-tall view fence for the next 80 feet heading north.

When the subject parcel was originally platted in 1957 it was not adjacent to a key lot. The existing key lot situation was created as a result of a right-of-way abandonment approved by the City Council in 2023 under case # 3-AB-2020. The lot to the south, which is now part of St. Patrick Catholic Community, previously had two frontages along both East Mercer Lane, as well as North 85<sup>th</sup> Place. The abandonment case abandoned the right of way along East Mercer Lane, changing the legal front of the lot to the south from East Mercer Lane to North 85<sup>th</sup> Place. This established the southern lot's northern property line as the side yard, which abuts the subject property's rear yard making this a key lot scenario.

## VARIANCE CRITERIA ANALYSIS

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- 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:

This property was not originally designated as “abutting a key lot”. The adjacent parcel, now part of St. Patrick Church, was previously a residential property backing up to 8539 E Desert Cove. In March 2023, an abandonment case for a portion of Mercer Ave eliminated our property's right to construct an 8-foot wall along the east side, a change that was not acknowledged in the City Council Report. Under the original plat, this wall would have been permissible as part of the side yard. However, the abandonment and subsequent zoning change for the church altered the designation of our property, infringing upon this right.

### Staff Analysis:

The subject parcel is similar in size and shape to other properties in the R1-35 zoning district. The minimum lot size for R1-35 is 35,000 square feet and the subject property is approximately 43,900 square feet.

As previously stated, the key lot scenario was created as a result of abandonment case 3-BA-2020 that was approved in 2023. Before the abandonment approval, the proposed

six (6) foot wall would have been in conformance with Zoning Ordinance requirements. The abutting lot to the south also has an existing eight (8) foot tall wall along N 85<sup>th</sup> Place which is now non-conforming to the front yard wall requirements per the R1-35 zoning district development 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:**

Applicant Statement:

The applicant states that the property is flanked by major and minor collector roads, with 84<sup>th</sup> Street and Shea Boulevard classified as arterial routes. All the above create a high traffic road in a residential area. The wall will help with sound from the 101 loop and security from St Patrick Church. Additionally, without a variance we surrender the ability to utilize the property for enjoyment.

Staff Analysis:

The subject lot is situated north of East Shea Boulevard which is a major collector, and east of North 84<sup>th</sup> Street which is a minor collector. All other properties in the R1-35 district are subject to the same wall location requirements, when abutting a key lot. Other corner lots in the R1-35 district that do not abut a key lot could construct a similar wall on the property line on the longer street frontage. As previously mentioned, this lot would have had the right to construct the proposed wall on the property line prior to 2023 when the right-of-way abandonment on the property to the south was approved. The subject lot is currently allowed to build a six (6) foot tall wall, however it must meet the required forty (40) foot required front yard setback.

- 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 that constructing the wall on the east side will help mitigate noise from the highway and Shea Boulevard, a heavily trafficked road, while also serving as a natural extension of the existing non-conforming 6 ft CMU wall along 85<sup>th</sup> Street. The City of Scottsdale also granted the church approval for a new 6 ft CMU wall along 85<sup>th</sup> Street extending 120 ft, under Section 3.1 (pg. 2 of their City Report). We have already conceded 8 feet along the south side of the property for a Public Utility Easement (PUE), reducing usable space by 1,734 square feet. Additionally, this property faces significant security concerns due to its proximity to the church compound, which hosts over 2,465 large gatherings annually, including 263 addiction recovery meetings. When the church parking lot reaches capacity, Desert Cove often becomes the most



convenient overflow parking area, increasing the risk of trespassing as attendees attempt to shortcut through the yard to access the church.

Staff Analysis:

The subject parcel is similar in size and shape to other properties in the R1-35 zoning district. The minimum lot size for R1-35 is 35,000 square feet and the subject property is approximately 43,900 square feet.

As previously stated, the key lot scenario was created as a result of abandonment case 3-BA-2020 that was approved in 2023. Before the abandonment approval, the proposed six (6) foot wall would have been in conformance with Zoning Ordinance requirements.

**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 that they have reached out to 62 neighboring properties within a 750-foot radius, and residents have expressed their support for this variance. Granting this variance will not have any material adverse impact on nearby residents, adjacent properties, the surrounding neighborhood, or public welfare as this is the property “side yard”. The lot will remain designated for single-family residential use and the wall will aesthetically fit in as it is an extension of the existing non-conforming 6ft CMU wall on 85th.

Staff Analysis:

The intent of required setbacks and wall height limitations along frontages is to create open rural character, establish view corridors for public safety, and maintain aesthetic continuity with adjacent lots. The request for the solid wall along the side property line may impact the character of the street frontage, however it should be noted that the abutting lot to the south does already has an eight (8) foot tall wall that is obstructing the front yard frontage openness, and the subject site would have been permitted to construct the proposed 6-foot-tall wall prior to the right-of-way abandonment in 2023.

## SUMMARY

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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, shape, and topography of the property are not unique and applicable, however the circumstances that led to the

configuration of a key lot may be. 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.

If the Board chooses to grant the requested variance, staff recommends the following stipulation:

1. Any site walls within the 40-foot front yard setback shall be designed and located consistent with the site plan included in the staff report under Attachment #7.

**APPROVED BY**

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Andrew Dobson, Report Author  
480-312-2515, adobson@scottsdaleaz.gov

2/14/2025

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Date



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Bryan Cluff, Planning & Development Area  
Manager, Board of Adjustment Liaison  
480-312-2258, bcluff@scottsdaleaz.gov

2/14/2025

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Date




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

2/17/2025

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Date



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Erin Perreault, AICP, Director  
Planning and Development Services  
480-312-7093, eperreault@scottsdaleaz.gov

02/18/2025

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Date

**ATTACHMENTS**

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

January 23, 2025

City of Scottsdale  
Planning and Development  
7447 E Indian School Road  
Scottsdale, AZ

Subject: Personal Residence  
Project No. 1036-PA-2024, C9570

I purchased this property with the intent of creating a home and continuing my active involvement in the Scottsdale community, where I have lived for six years. The property is classified as having two (2) street frontages requiring 40-foot setback on both sides. This designation significantly limits the building envelope and usable land by 7,680 sq ft on the East portion of the property along with the 1,640 sf we are giving up on the South side of property for the PUE. This makes 9,320 SF or approximately 20% of the property unusable.

My plan for the home at 8539 E Desert Cove Ave, a corner lot, is to create a safe and secure yard for enjoyment. Abandonment Case (Case # 3-AB-2020) at St Patrick's Church reclassified my property an abut a key lot. This classification has taken away my right to build a security wall on the east side aka "side yard" of my property.

I was unaware of the rezoning decision that resulted from the church's abandonment case. This decision stripped me of the ability to construct a fence along my property line at 85th Street which was allowed prior to the city granting my rezoning permissions.

In accordance with the City of Scottsdale Ordinance, I am requesting a variance for the perimeter wall at the East property line to secure my backyard. There will be a 6-foot masonry wall starting at the Southeast corner and extending North 81 feet. The wall will then transition into a combination wall at the auto court extending 76 feet north and 31 ft west. This wall will consist of a 3-foot solid masonry pony wall with 3 feet of steel fence on top featuring 50% visibility. These walls will assist in enhancing security and reducing noise at the property.

Thank you for your consideration on this request and I look forward to a favorable resolution for both parties.

Thank You,

Wyndham Clark

**ATTACHMENT #1**

### 13. Application Narrative Form Answers

Intro:

Due to new restrictions stemming from the March 2023 decision for the neighboring St. Patrick Church and an abandonment case for a specific piece of Mercer Ave (Case # 3-AB-2020), the property lost its right to construct an 8 ft solid wall along the east property line due to the designation of an “abut a key” lot. We propose a variance for a perimeter wall on the east property line. There will be a 6-foot masonry wall starting at 8’ North of the Southeast corner and extending North 81 feet. The wall will then transition into a combination wall at the auto court extending 76 feet north and 31 ft west. This wall will consist of a 3-foot solid masonry pony wall with 3 feet of steel fence on top featuring 50% visibility. These walls will assist in enhancing security and reducing noise at the property.

#1:

This property was not originally platted as an “abut a key lot”. The adjacent parcel, now part of St. Patrick Church, was previously a residential property backing up to 8539 E Desert Cove. In March 2023, an abandonment case for a portion of Mercer Ave eliminated our property’s right to construct an 8-foot wall along the east property line. A change that was not acknowledged in the City Council Report. Under the original plot, this wall would have been permissible as part of the side yard. However, the abandonment and subsequent zoning change for the church altered the designation of our property, infringing upon this right.

#2:

The property is flanked by major and minor collector roads, with 84th Street and Shea Boulevard classified as arterial routes. All of the above create a high traffic road in a residential area. The wall will help with sound from the 101 loop and security from St Patrick Church. Additionally without a variance we surrender the ability to utilize the property for enjoyment.

#3:

Constructing the wall on the east side will help mitigate noise from the highway and Shea Boulevard, a heavily trafficked road. This wall will serve as a natural extension of the existing non conforming 6 ft CMU wall along 85th Street. The City of Scottsdale granted the church approval for a new 6 ft CMU wall along 85th Street extending 120 ft, under Section 3.1 (pg. 2 of their City Report). We have conceded 8 feet along the south side of the property for a Public Utility Easement (PUE), reducing usable space by 1,734 square feet. The additional 40’ setback will make another 7,680 SF unavailable due to backyard security concerns. Additionally, this property faces significant security concerns due to its proximity to the church compound. St Patrick Church hosts over 2,465 large gatherings annually, including 263 addiction recovery meetings. When the church parking lot reaches capacity, Desert Cove often becomes the most convenient overflow parking area, increasing the risk of trespassing as attendees attempt to shortcut through the yard to access the church causing danger and harm to our property.

#4:

We have reached out to 62 neighboring properties within a 750-foot radius and residents have expressed their support for this variance. Granting this variance will not have any material adverse impact on nearby residents, adjacent properties, the surrounding neighborhood, or public welfare as this is the properties "side yard". The lot will remain designated for single-family residential use and the wall will aesthetically fit in as it is an extension of the existing non-conforming 6ft CMU wall on 85th.





Context Aerial

2-BA-2025

## ATTACHMENT #3





Close-up Aerial

2-BA-2025

## ATTACHMENT #4





Q.S.  
29-48

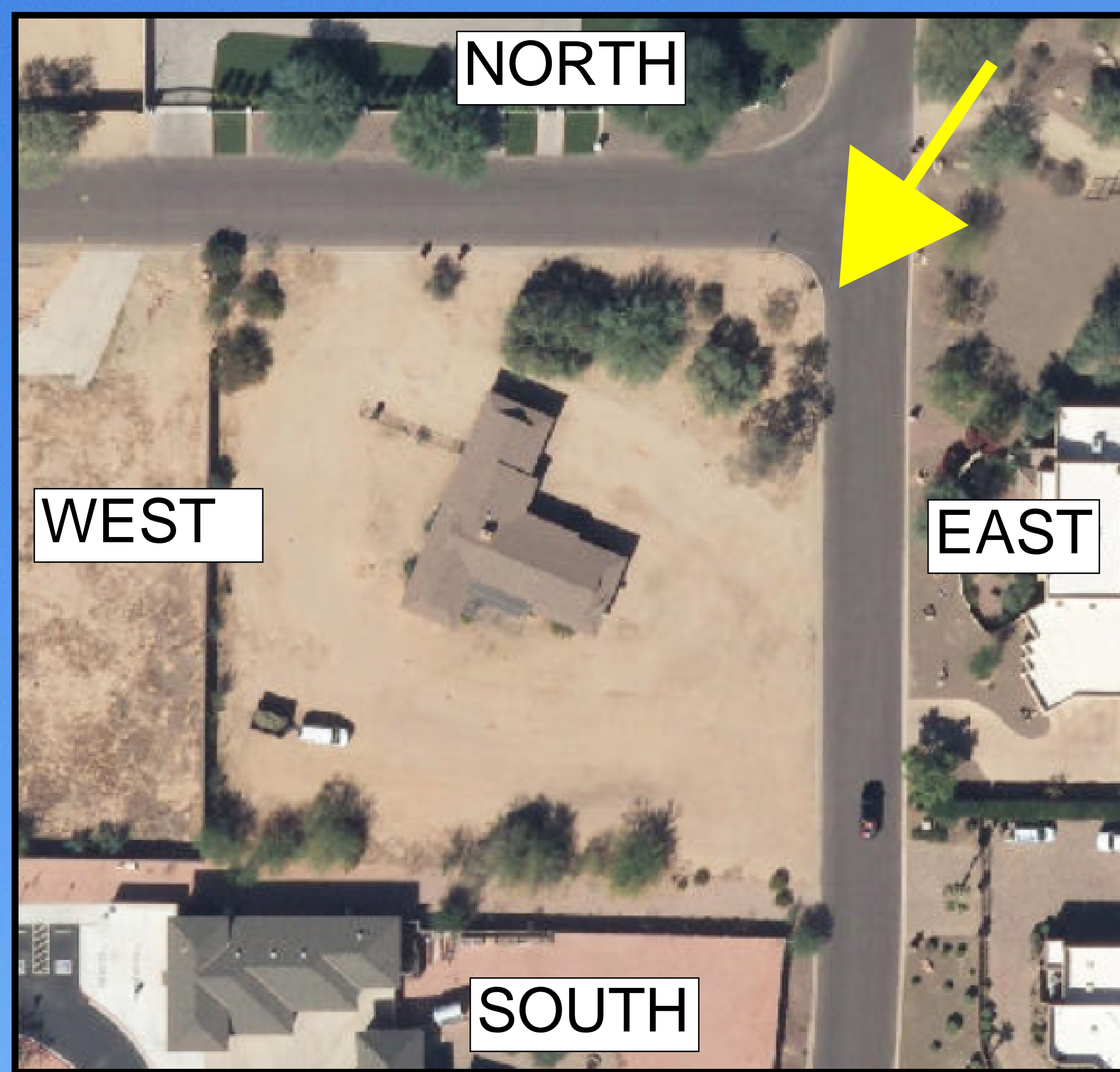
Aerial

Zoning Aerial

2-BA-2025

ATTACHMENT #5



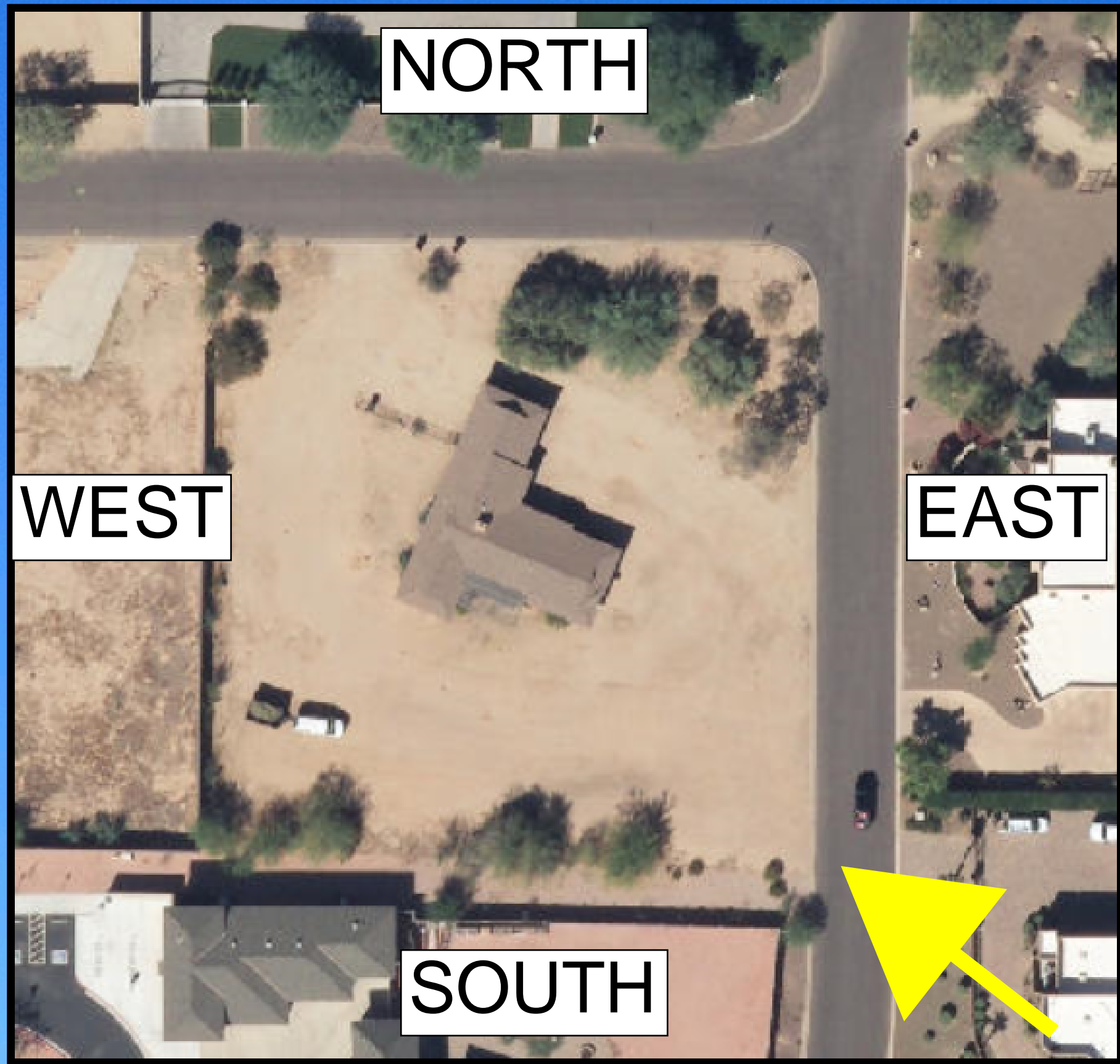


NE Corner



ATTACHMENT #6

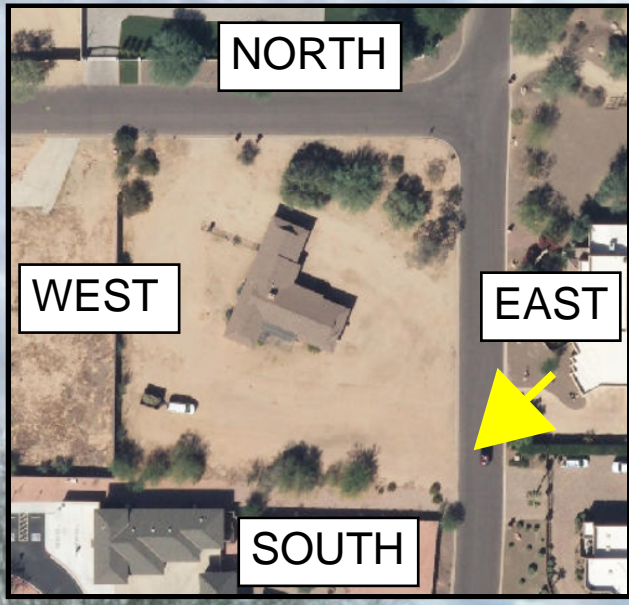




SE Corner



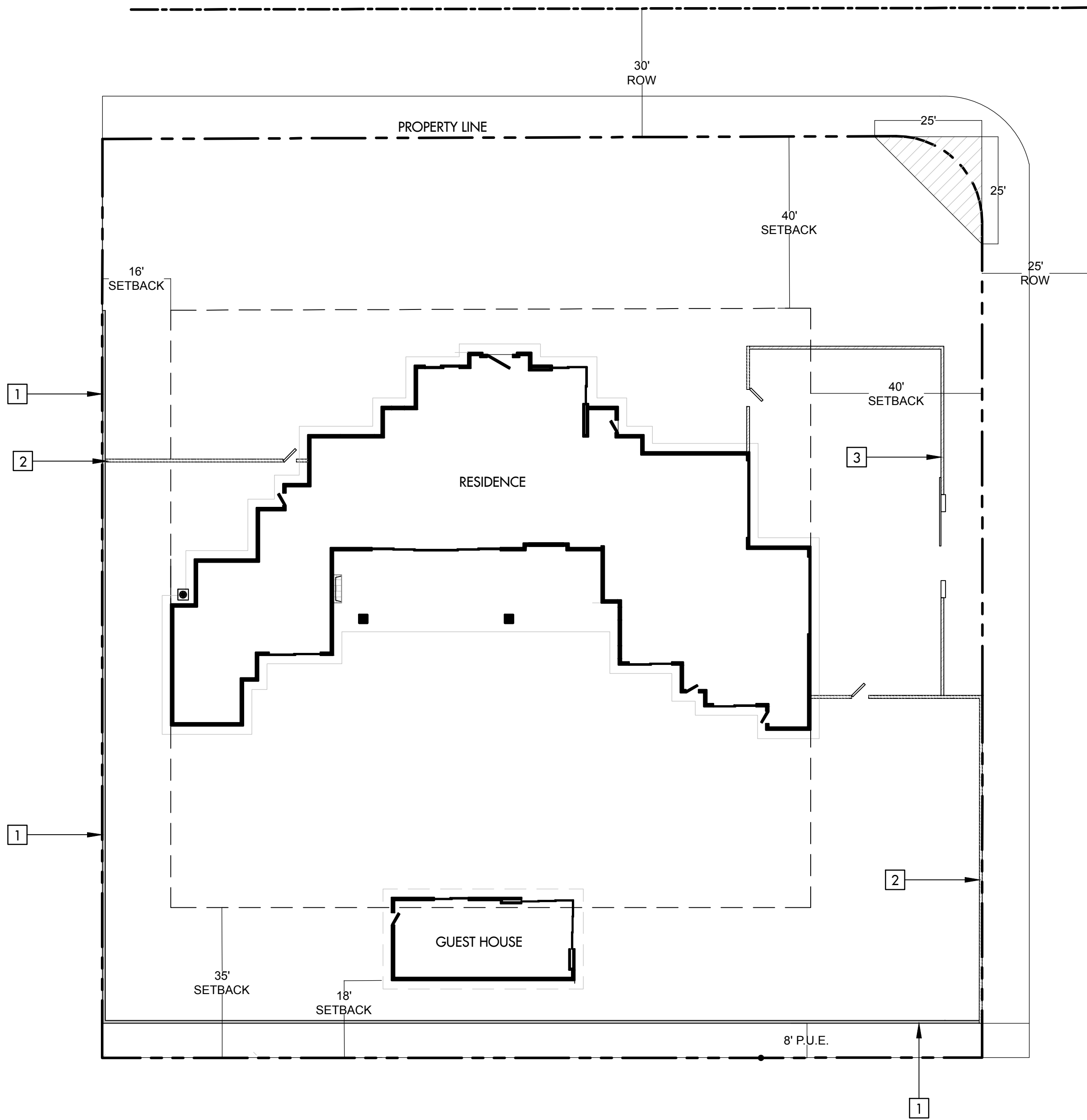




SE Corner







MATERIALS SCHEDULE

SYMBOL		PRODUCT	QTY.
	1	NEW PERIMETER WALL 8" CMU BLOCK WALL	371 LF
	2	NEW PERIMETER WALL 6" CMU BLOCK WALL	179 LF
	3	NEW VIEW FENCE WALL 3" CMU BLOCK WALL W/ 3" VIEW FENCE 50% VISIBILITY	127 LF



LANDSCAPE PLAN  
CLARK RESIDENCE

8539 E. DESERT COVE  
SCOTTSDALE, AZ 85260

CLIENT

PROJECT NO.

DRAWN BY  
JA | JH | SH

REVISION DATE  
05.17.24 11.06.24  
05.24.24 11.18.24  
05.28.24 12.11.24  
07.15.24 01.15.25  
09.11.24 01.30.25  
10.31.24

SHEET TITLE

SHEET NO.

1 OF 1



***Roger A. Briggs, DDS, Ltd.***  
***Bradley A. Briggs, DDS***

February 6, 2025

To Whom It May Concern:

We are in receipt of a request from Shelby Crisman for a variance related to the perimeter wall on the east side of the property located at 8539 E. Desert Cove Ave. This letter is acknowledgement of our support of the variance.

In addition, if appropriate at this time, we would welcome the City of Scottsdale to look at the traffic patterns on 85<sup>th</sup> place, which have increased dramatically over the years. One resident in the neighborhood has wheelchair transportation only. With no sidewalks or streetlights, and with traffic coming from the northern residences at excessive speeds, this is extremely dangerous for him as well as others. I would like the City to place speed bumps from Shea north on 85<sup>th</sup> Place.

Respectively submitted,

Dr. & Mrs. Roger Briggs  
RJB Trust 1  
10865 N. 85<sup>th</sup> Place  
Scottsdale, AZ 85260

Emailed to: [Shelby@theodg.com](mailto:Shelby@theodg.com)  
[ADobson@Scottsdaleaz.gov](mailto:ADobson@Scottsdaleaz.gov)

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8539 E Desert Cove Ave variance

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From deb statt <1debstatt1@gmail.com>

Date Thu 2/13/2025 10:18 AM

To shelby@theodg.com <shelby@theodg.com>

Cc Dobson, Andrew <adobson@scottsdaleaz.gov>

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

I am in accord with the request for a variance related to the perimeter wall on the east side of the property, 8539 E. Desert Cove Ave, Scottsdale, AZ. There is a sizeable amount of traffic that passes by, and it would enhance the property owner's privacy and security to construct the described fence.

We live on 85th Place and we know how much traffic passes by, their speeding in a 25 mph zone and how much a wall would help to buffer the sound and provide security to the residents.

Deborah Statt

10642 N 85<sup>th</sup> Place

Scottsdale, AZ 85260



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Letter received for Variance - 8539 E Desert Cove Ave

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From Alana Mann <alana@statesmanusa.com>

Date Tue 2/4/2025 3:04 PM

To Shelby@theodg.com <Shelby@theodg.com>

Cc Dobson, Andrew <ADobson@Scottsdaleaz.gov>

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

Dear Shelby,

I am the owner of the 4 acre property on the east side on 85<sup>th</sup> Place, Serenity Ranch Estates, LLC. I believe the request for a 6 foot masonry wall is reasonable and should be allowed.

Thank you,

Alana Mann  
For Serenity Ranch Estates, LLC  
602.579.2594





Outlook

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Variance - 8539 E Desert Cove

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From Ryan McDonald <rpmcdonald@gmail.com>

Date Tue 2/4/2025 8:43 AM

To shelby@theodg.com <shelby@theodg.com>; Dobson, Andrew <adobson@scottsdaleaz.gov>

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

Ms. Crisman,

I received your letter regarding a requested variance at 8539 E Desert Cove.

I am in full support of your requested variance regarding a privacy fence. This is a very reasonable request and I imagine anyone building on this property would expect to be able to erect a privacy fence, for both security and privacy concerns.

Feel free to contact me if you have any questions.

Ryan McDonald  
8608 E Gail Rd.  
Scottsdale 85260  
602-332-0752