

EARL, CURLEY & LAGARDE, P.C.
ATTORNEYS AT LAW

Telephone (602) 265-0094
Fax (602) 265-2195

3101 North Central Avenue
Suite 1000
Phoenix, Arizona 85012

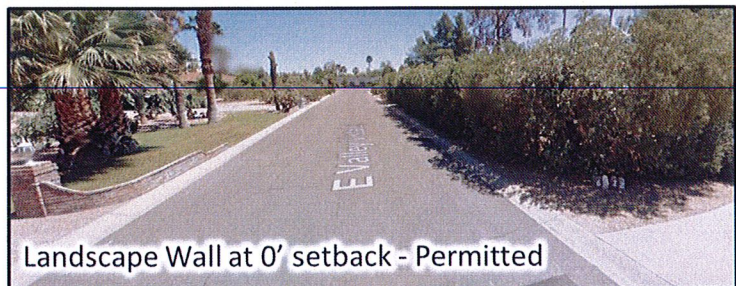
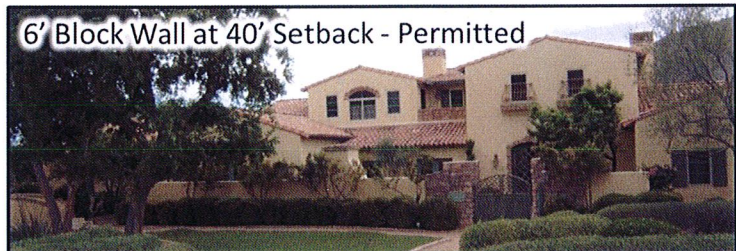
Text Amendment Narrative

The purpose of this text amendment is to effect a minor change to the wall section of the Paradise Valley zoning ordinance. The proposed changes would allow full and partial view fencing (such as wrought iron fencing) in residential front yards at a 20' setback.

This amendment supports the Town's ongoing efforts to improve the safety of private property and to create better conditions that will help the Police Department to protect Paradise Valley residents and their property.

Although Paradise Valley compares still favorably to other Arizona jurisdictions in terms of the rate of property crimes, the last couple of years have seen an increase in such property crimes in Paradise Valley. This has created concern among homeowners, the Town leadership, and the Police Department. It has also created a greater desire for security and safety.

One of the most common security measures is residential fencing. But the current limits on fencing in the zoning ordinance are leading to 6' block walls being erected in front yards and tall landscaping walls being planted along residential street (examples to the right), both of which obscure visibility of the residence. That is a problem for the Police Department, which needs visibility into front yards.



The proposed text amendment would allow view fencing at a 20' front setback, which would increase visibility over other fencing options. This increase visibility is better for the Town, both in terms of greater security and Town aesthetics. Such view fencing is shown in the example below:



The proposal would give homeowners a security fencing option that is superior to the 6' block wall and landscape hedges in two main respects: (1) view fencing enables police and neighbors to see past the fence for visual safety inspections, which is not true of block walls or landscaping walls; and (2) unlike block walls and hedges, view fencing preserves an open residential aesthetic. These will be discussed in greater detail below.

Basics of Text Amendment

The exact wording of the text amendment is attached to this narrative in legislative format. But the essence of the proposal can be understood in two excerpts.

The first excerpt is to add “Combination View Fence” to the definition section of the wall code by simply piggybacking on the definitions of “Wall” and “View Fence” already in the ordinance (the existing zoning ordinance is pasted below in black text and the proposed changes are shown below in blue):

Wall - A wall or fence (including gates) is a freestanding, upright structure, other than plant material, constructed of barriers to enclose, divide, delineate, screen, retain water or earth, or protect an area. The term wall shall include all fences, except a view fence as defined below.

View Fence – A view fence (including gates) is a free-standing, upright structure, constructed with openings between the materials used for construction of the fence, where the openings represent at least 80 percent of the total fence surface area, or where the opening represent at least 70 percent of the total fence surface area when decorative elements such as knuckles, scrolls, spear points and ball caps are present to accentuate the design of the fence.

Combination View Fence – A combination view fence (including gates) is a free-standing, upright structure that meets this Section’s definition for “view fence” for at least 50% of the height of the structure and meets this Section’s definition for “wall” for the remaining portion. The portion of the Combination View Fence meeting the definition of “view fence” must be positioned above the portion meeting the definition of “wall.”

An example of this combination view fencing would be a fence comprised of 3’ of view fencing atop a 3’ block base. A fence comprised of 4’ of view fencing atop a 2’ block base would also qualify.

The second excerpt is a reduction to the front yard setback requirement for full view fences or combination view fences, when along local, collector, or minor streets:

TABLE 2404A – ALL RESIDENTIAL DISTRICTS SETBACK AND HEIGHT REGULATIONS FOR WALLS / VIEW FENCES/COMBINATION VIEW FENCES

FRONT YARD ALONG RIGHTS-OF-WAY			
STREET TYPE	TYPE OF WALL OR FENCE	SETBACK FROM PROPERTY LINE, FEET	MAXIMUM HEIGHT, FEET
Major	View Fence	10, Minimum	**8, including berm
	Meandering Wall	15, Average	**8, including berm
	All Others	20, Minimum	**8, including berm
	Any	10, Minimum	3
Local, Collector, Minor	Any	10, Minimum	3
	Any	*40, Minimum	6
	<u>View Fence/Combination View Fence</u>	<u>20, Minimum</u>	<u>6</u>
SIDE OR REAR YARD ALONG RIGHTS-OF-WAY			
Major	View Fence	10, Minimum	**8, including berm
	Meandering Wall	15, Average	**8, including berm
	All Others	20, Minimum	**8, including berm
	Any	10, Minimum	3
Local, Collector, Minor	View Fence	10, Minimum	6
	Meandering Wall	15, Average	6
	All Others	20, Minimum	6
	Any	10, Minimum	3
SIDE OR REAR YARD INTERIOR (not along any right-of-way)			
Not applicable	Any	None Required	6
SIDE OR REAR YARD INTERIOR (adjoining non-residential property other than a right-of-way)			
Not applicable	Any	None Required	**8, including berm

As this chart shows, the ordinance already contemplates reducing setback distances by 50% when view fencing is utilized instead of block along right-of-way. For example, on side or rear yards along local, collector, and minor roads, the setback requirement for a 6' block wall is 20'.

But when a view fence is used instead, the setback requirement is reduced by 50%, to only 10'. Our proposal would mirror this allowance. A 6' block wall would still require a 40' front setback. But this requirement would be reduced by 50%, to 20', if view fencing or combination view fencing were used instead of block.

The Rise of Residential Property Crimes

Relative to other jurisdictions in the Phoenix metro area, Paradise Valley still has a relatively low rate of property crimes. However, PV residents have seen an increase in the rates of property crimes. This has created concern among town leaders, the Police Department, and residents.

According to Chief of Police, Peter Wingert, "Paradise Valley has seen a rise in reported property crimes during the course of this [2015] calendar year, and we need your partnership in order to push the number back down."¹ "The increase from last year's numbers to this year's [2015] numbers is of concern."²

As the Paradise Valley Independent continues to report on such crimes, citizens are taking note, and this perception creates reality:

- "TV, end tables stolen during PV home burglary" (7/14/16)
- "A Paradise Valley home fell victim to a burglary sometime during the month of May, according to police officials" (5/17/2016)
- "Home burglars hit Paradise Valley hard during February" (2/23/2016)
- "Midday home burglary takes place in Paradise Valley" (2/19/2016)
- "Two more Paradise Valley homes fall victim to burglary" (2/26/2016)
- "Two more home burglaries take place in Paradise Valley" (1/13/2016)
- "Paradise Valley burglar enters home, takes jewelry" (12/21/2015)
- "Paradise Valley home falls victim to construction-burglary" (12/2/2015)

According to the Town's previous Chief of Police, "Paradise Valley's affluence, darkness, and layout make the city a magnet for property crimes."³

In response to a finding regarding "opportunistic" home break ins, Mayor Collins stated:

It means that we still have work ahead of us better educating residents on the importance of securing their own property and being less of a target for crime. On the other hand I see this as both an opportunity and mandate for the council to take a leadership role in helping our police department focus in on this condition to make meaningful and measurable progress.

¹ <http://paradisevalleyindependent.com/opinions/chief-wingert-anti-theft-dots-encouraged-in-paradise-valley/>

² <http://paradisevalleyindependent.com/news/paradise-valley-police-reports-spike-in-residential-burglaries/>

³ http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1115&issue_id=22007

Said Councilwoman Syms:

Our police officers work hard every day to keep us safe and protect our homes and our community should continue do everything it can to provide them the support they need to do their jobs effectively.

To continue to keep Paradise Valley safe and secure, the town has been very active in addressing this increase in property crimes. We believe the proposed amendment will compliment and further the Town's existing efforts. It will help to preserve view corridors into residential front yards by providing alternatives to block walls and tall hedges

Public Safety Advisory Committee

In 2015, as another means of addressing the rising rate of residential property crimes, the Town Council created the Public Safety Advisory Committee. The Committee addresses issues of prevention, enforcement, awareness and community and victim outreach. That committee is currently chaired by Councilwoman Maria Syms and includes an impressive group of resident members, including several with security and legal backgrounds.

In January, we presented this text amendment proposal to the Public Safety Advisory Committee. The Committee supported this text amendment proposal via unanimous vote. Committee members agreed that by allowing view fencing at 20' would incentivize citizens to select view fencing over the landscape hedge or 6' block wall option.

The Community Resource Officer, Officer Kevin Albert, was also in attendance and provided valuable input. This relatively new Community Resource position was created based on a recommendation from a prior safety task force, also put together in response to home break-ins. Officer Albert explained how this text amendment supported the principles of Crime Prevention Through Environmental Design (known as C.P.T.E.D.), which he helps implement in the residential setting.

In short, C.P.T.E.D. means preventing crime through design. According to the Town's website, "The goal [of C.P.T.E.D.] is to prevent crime by designing a physical environment that positively influences human behavior. The theory is based on four principles: natural access control, natural surveillance, territoriality, and maintenance."

According to Officer Albert, view fencing is superior to landscape hedges and block walls because it allows police and neighbors to see the fence and keep eyes on residential properties. Having eyes on the property is a strong deterrent to criminals. In contrast, landscape hedges and 6' block walls give burglars places to hide behind.

Front yard fencing will help deter residential crime. But according to Officer Albert, when police conduct their patrols and pass by landscape hedges and block walls, they are forced to simply drive past because these walls offer no internal view. View fencing allows police and residents to see what is occurring behind the fence—something that deters burglars. Officer Albert was very supportive of this proposal.

Examples of Landscape Walls and 6' Block Walls at 40'

For those residents looking for increased safety and peace of mind in their homes, this application will provide a fence option that is superior to the landscape hedge and 6' block wall option currently being implemented by such residents.

Landscape Wall

Landscape hedges are enticing to some residents because they can be planted right on the property line. But these landscape hedges have various problems.

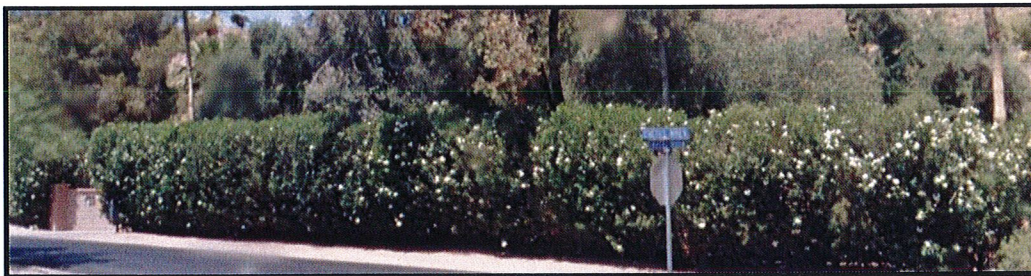
First, these walls block the entire view of the home, causing the residential aesthetic to be substantially altered.

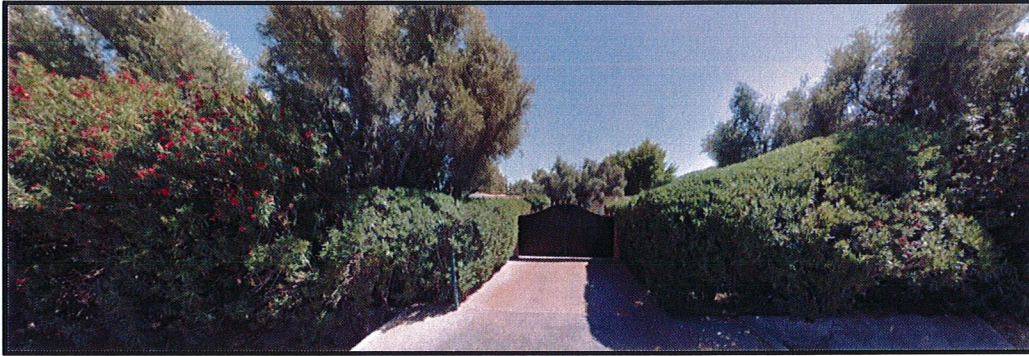
Second, especially when comprised of oleanders, these landscape hedges grow unruly when not regularly trimmed, growing to excessive heights.

Third, having such dense and tall landscaping so close to the street creates a canyon effect.

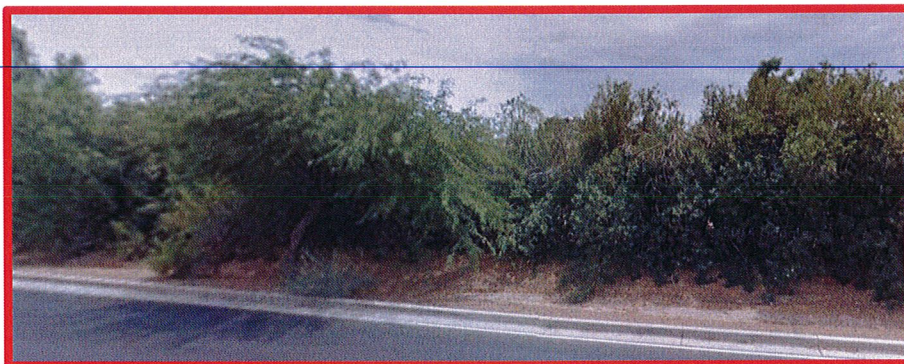
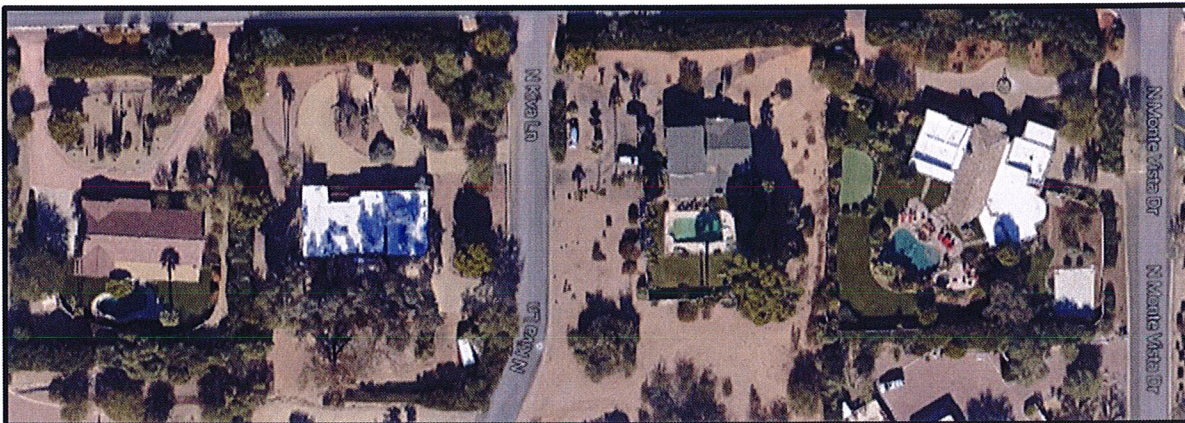
Fourth, as discussed above, the police do not like landscape hedges because they offer no views into front yards when conducting safety patrols or inspections.

Examples of these landscape hedges are shown below, but many more are visible all across the Town:



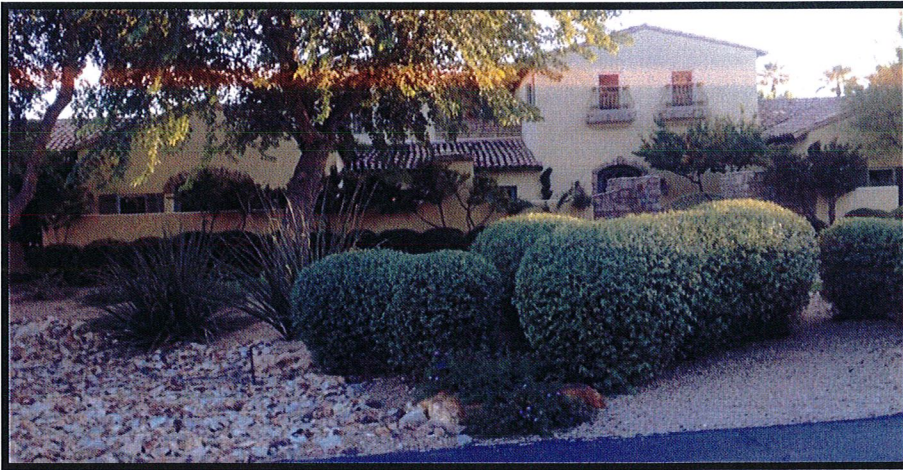


The aerial below shows a group of 4 consecutive houses that have utilized the landscape hedge on, or very near, the front property line. The subsequent photograph shows what the landscape hedge of the far right house looks like from the street (i.e. the house marked with the red arrow is shown in the picture below with the red border). The house is completely hidden behind the hedge wall. The residential aesthetic of the whole street is almost completely gone.

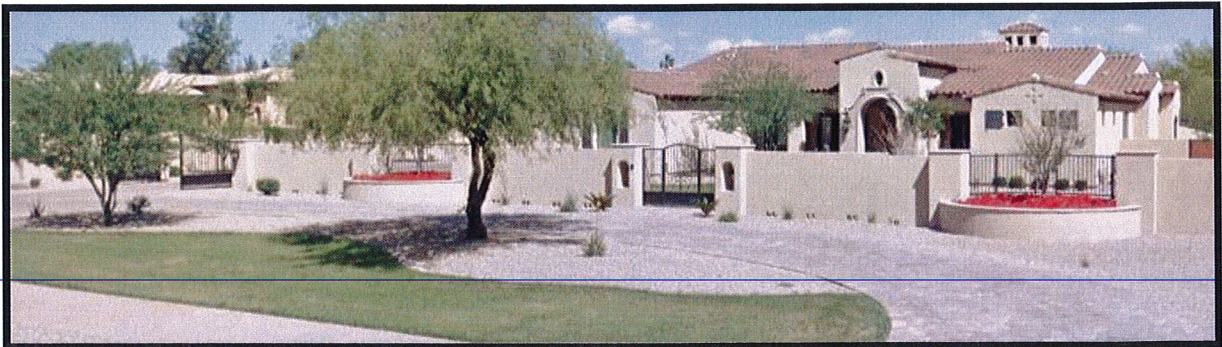


6' Block Wall at 40'

The second wall type permitted by the ordinance is a 6' block wall, at a 40' setback (or greater). Like landscaping walls, these walls cut off view of the house behind it. In the example below, the fence nearly blocks the entire first story. The house feels like it's in a compound, sectioned off from the rest of the community. Additionally, burglars can still easily hide behind these walls, making them inferior to the proposed view fencing for purposes of neighborhood safety.



The following example is a helpful one. This wall has solid portions and combination view fencing portions.



When viewing this photograph, the eye is naturally drawn to the view fencing portions of the fence. The eye desires to see past the wall and so focuses in on those areas. The view fencing allows greater visibility of the home and yard, which is preferable for police safety, and for residential aesthetics.

As the following section will discuss, by allowing a reduction in the required front setback if view fencing is used, this proposal would provide residents with a superior fence option that we think residents will select over landscape hedges and block walls.

Incentivizing Residents to Select View Fencing

The current zoning ordinance requires any front yard fencing to be setback 40' from the front property line. For many residents desiring some type of fencing, their lots are simply not deep enough for them to meet this deep setback requirement. Abiding by a 40' setback may put the fence either on top of the house itself or so close to the house that it is functionally impractical. Thus, their only fence option is the landscape hedge, which often is planted on or very near the front property line.

Under this proposal, however, by only requiring a 20' setback, these residents will have a strong incentive to select the view fencing option over the landscape hedge. From a maintenance and aesthetic point of view, this view fencing is a far better option for the homeowner. And now, with only a 20' setback, the option is accessible.

Other residents have enough lot space to be physically able to install a wall at a 40' setback, but they simply choose not to. These residents recognize that front yard space on the outside of a fence is far less usable than front yard space on the inside of the fence. For example, residents want their children to play on the inside of the fence, not the outside. Homeowners create courtyard patios on the inside of their fence, not the outside. Accordingly, committing 40' to be on the outside of their fence is more of their yard than they are willing to part with. These residents are left with the same one choice for fencing: landscape hedge.

This proposal would also provide an incentive to residents to use view fencing instead of a landscape hedge. Whereas residents would normally have to part with 40', this proposal would only require a 20' setback. At only a 20', much less of the yard would be required to remain on the outside of the fence. We believe certain residents unwilling to abide by a 40' setback, and thus who are inclined to use a landscape hedge for security, would be willing to forego 20' and would thus choose this view fencing option instead.

Thus, we believe this proposal will have an effect of moving the Town away from landscape hedges more and more. And that is something everyone will be happy with.

The Garner Family – A Case Study

To understand how this choice works in practice, and how the crime element factors into this decision, consider the Garner family. Years ago, while living in their first Paradise Valley home, Mr. Alan Garner received a notice while at work that the burglar alarm had been set off. Because it occurred around 9:45 AM, Alan assumed it had been a false alarm. But not wishing to take the chance, Alan drove to his home to investigate. As he approached his front door, he could see a crow bar had been used to rip the front door open.

The police arrived shortly thereafter and they entered the house together and confirmed a home invasion had taken place. Police informed Alan that his was the 3rd home break-in on his street that very morning.

The Garners not only experienced a financial loss that day, but they lost the sense of security and protection they had. The whole experience greatly unsettled the family and has left a lasting impression on them.

When the Garners moved to their current house at 5729 E. Cactus Wren Rd., they were anxious to secure the home. With nothing more than a 3' block wall in the front yard, the Garners hired a fencing company to install additional fencing. They chose to add 3' of intricately designed wrought iron fencing to the top of the existing 3' wall. The result was an attractive design that complimented the appearance of the home (seen to the right).



In their contract with the fence company, the Garners were careful to require that all applicable Town code provisions be complied with. Unfortunately, and unbeknownst to the Garners, this was not done, and the fence was installed at the 20' setback line, rather than the required 40' line.

The Garners now fully understand the code does not permit their fence to remain, and they are prepared to require the fence company to remove it. But the analysis of their remaining options is a helpful case study.

Installing a fence at a 40' setback is not practical for the Garners' property. As shown below, 40' would put the fence right up against the Garners' house.



Without the available 40', the only remaining option for the Garners is to plant a hedge wall on the property line. The Garners have decided this will be their fall back option if this amendment is not successful. They recognize it is not ideal, but Mrs. Garner simply doesn't feel safe not having some type of fence in place.

Below is an example of a combo fence, such as is being proposed in this amendment, on a home in Paradise Valley.

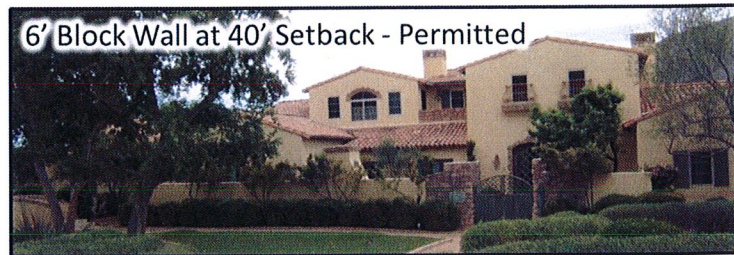


This fence is classy, preserves the entire view of the front yard and house for the police and neighbors, and still provides security and peace of mind to its residents.

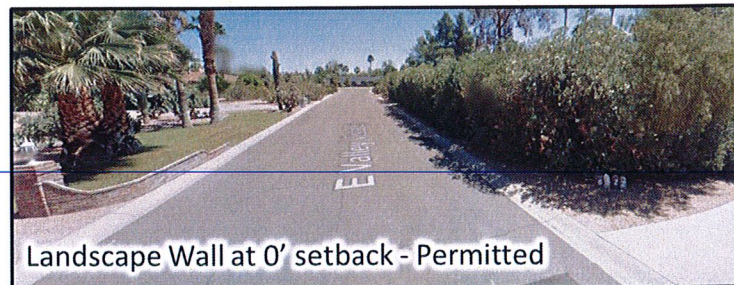
We strongly believe this type of combo view fence is far superior to the block wall and landscape hedge options currently being pursued by those Town residents who are looking for increased home security (pictures below).

It is superior in terms of preserving both residential aesthetics and for promoting C.P.T.E.D. crime prevention principles.

Residents unwilling or unable to give up 40' of their front yard will have an option to erect a view fence at 20' and thus won't have to fall back to the landscape hedge approach.



6' Block Wall at 40' Setback - Permitted



Landscape Wall at 0' setback - Permitted

Of course, the vast majority of Paradise Valley residents will continue to have no fence at all. And so this amendment would have no effect on them. But for those seeking fencing to combat the rising residential crime rate, this proposal is a great option, and much better than the options that exist today.

Conclusion

The best solution to the rise in burglary is for people to better secure their own homes. This amendment will help them do that. And it would do so in a way that preserves police officers' ability to be effective. It opens view corridors into front yards and allows the police (and neighbors) to visually inspect the front yard. In other words, front yards become inhospitable to would-be burglars.

This amendment will provide citizens with an option that will simply help them feel more secure in their homes. That is no small accomplishment. This amendment compliments and furthers the efforts already taken by the Town and the police department.

It is significant that the Public Safety Advisory Committee, created specifically to address crime and safety issues in the Town, has recommend approval of this amendment.

Finally, this amendment also supports a superior neighborhood aesthetic by providing residents with a fencing option that is far superior to compound-like block walls or landscape hedges that are planted near the property line and grow tall and unruly.

For the reasons stated in this narrative, we urge the Planning Commission to approve this amendment.