



# Town of Paradise Valley

6401 E Lincoln Dr  
Paradise Valley, AZ 85253

## Meeting Notice and Agenda Board of Adjustment

---

Wednesday, March 7, 2018

5:00 PM

Council Chambers

---

### 1. CALL TO ORDER

### 2. ROLL CALL

*Notice is hereby given that members of the Public Body will attend either in person or by telephone conference call, pursuant to A.R.S. §38-431(4).*

### 3. EXECUTIVE SESSION

*The Public Body may convene into an executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03.A.3.*

### 4. STUDY SESSION ITEMS

*Work/Study is open to the public however the following items are scheduled for discussion only. The Public Body will be briefed by staff and other Town representatives. There will be no votes and no final action taken on discussion items. The Public Body may give direction to staff and request that items be scheduled for consideration and final action at a later date. The order of discussion items and the estimated time scheduled to hear each item is subject to change.*

### 5. PUBLIC HEARINGS

*The Public Body may take action on this item.*

### 6. ACTION ITEMS

*The Public Body may take action on this item.*

- A. [18-105](#) **Request for Reconsideration of Emerson Fence Variance - 5739 N. Casa Blanca Drive (APN: 173-08-004A). Case No. BA-17-04**

**Staff Contact:**

George Burton, 480-348-3525

### 7. CONSENT AGENDA

*All items on the Consent Agenda are considered by the Public Body to be routine and will be enacted by a single motion. There will be no separate discussion of these items. If a Commissioner or member of the public desires discussion on any item it will be removed from the Consent Agenda and considered separately.*

**A. [18-106](#) Approval of the January 3, 2018 Board of Adjustment Minutes****Staff Contact:**

George Burton, 480-348-3525

**8. STAFF REPORTS****9. PUBLIC BODY REPORTS****10. FUTURE AGENDA ITEMS****11. ADJOURNMENT*****AGENDA IS SUBJECT TO CHANGE***

*\*Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Planning Commission are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.*

*The Town of Paradise Valley endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for disabled persons at public meetings. Please call 480-948-7411 (voice) or 480-483-1811 (TDD) to request accommodation to participate in the Planning Commission meeting.*



## Action Report

---

**File #:** 18-105

---

**TO:** Chair and Board of Adjustment

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** March 7, 2018

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Request for Reconsideration of Emerson Fence Variance - 5739 N. Casa Blanca Drive (APN: 173-08-004A). Case No. BA-17-04

**BACKGROUND**

The Board of Adjustment reviewed and denied this variance request at the January 3, 2018 meeting. The variance request was to allow existing non-conforming fence walls to remain.

Board Member Ozer is requesting that the Board of Adjustment reconsider this variance based upon new information presented by the applicant. The applicant identified that they "have learned that it is the Town's policy to establish a vehicular non-access easement along right-of-way for new subdivisions where it is adjacent to existing homes so as not to burden those homes with additional setbacks because of a road that only benefits the new subdivision. This is essentially an acknowledgement by the Town that those increased setbacks being imposed on adjacent property owners would constitute a hardship and lower their property value. With this information, the Board may be inclined to acknowledge the hardship, not as a need to move improvements like a pool or sport court but the very fact that a significant amount of property is lost with nothing gained." Attached is a copy of Board Members Ozer's request for reconsideration.

Currently, when a subdivision creates a new right-of-way (ROW) that adjoins an existing property, a separate tract (instead of a vehicular non-access easement) is generally created and placed between the existing property and the new ROW. This is done to prevent greater setback requirements on the existing property and/or to prevent the creation of non-conforming structures on the neighboring lot. Creation of this tract is not common.

The Board will discuss and take a vote to determine if they want to reconsider the application/variance request. If the Board approves a motion to reconsider (to a specific date), then the meeting date for the reconsideration will be advertised and noticed. The Board will then reconsider/re-review the application and take action at the scheduled meeting.

---

**File #: 18-105**

---

**ATTACHMENTS**

- January 21, 2018 Email Request for Reconsideration from Board Member Ozer
- Emerson Variance Case Material from January 3, 2018
- January 3, 2018 Draft Meeting Minutes

C: Nick Labadie (Applicant)  
Case File BA-17-04





## Action Report

---

**File #:** 18-105

---

**TO:** Chair and Board of Adjustment

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** March 7, 2018

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Request for Reconsideration of Emerson Fence Variance - 5739 N. Casa Blanca Drive (APN: 173-08-004A). Case No. BA-17-04

**BACKGROUND**

The Board of Adjustment reviewed and denied this variance request at the January 3, 2018 meeting. The variance request was to allow existing non-conforming fence walls to remain.

Board Member Ozer is requesting that the Board of Adjustment reconsider this variance based upon new information presented by the applicant. The applicant identified that they "have learned that it is the Town's policy to establish a vehicular non-access easement along right-of-way for new subdivisions where it is adjacent to existing homes so as not to burden those homes with additional setbacks because of a road that only benefits the new subdivision. This is essentially an acknowledgement by the Town that those increased setbacks being imposed on adjacent property owners would constitute a hardship and lower their property value. With this information, the Board may be inclined to acknowledge the hardship, not as a need to move improvements like a pool or sport court but the very fact that a significant amount of property is lost with nothing gained." Attached is a copy of Board Members Ozer's request for reconsideration.

Currently, when a subdivision creates a new right-of-way (ROW) that adjoins an existing property, a separate tract (instead of a vehicular non-access easement) is generally created and placed between the existing property and the new ROW. This is done to prevent greater setback requirements on the existing property and/or to prevent the creation of non-conforming structures on the neighboring lot. Creation of this tract is not common.

The Board will discuss and take a vote to determine if they want to reconsider the application/variance request. If the Board approves a motion to reconsider (to a specific date), then the meeting date for the reconsideration will be advertised and noticed. The Board will then reconsider/re-review the application and take action at the scheduled meeting.

---

**File #: 18-105**

---

**ATTACHMENTS**

- January 21, 2018 Email Request for Reconsideration from Board Member Ozer
- Emerson Variance Case Material from January 3, 2018
- January 3, 2018 Draft Meeting Minutes

C: Nick Labadie (Applicant)  
Case File BA-17-04

## George Burton

---

**From:** Hope Ozer  
**Sent:** Sunday, January 21, 2018 12:07 PM  
**To:** George Burton  
**Cc:** Emily B. Kile (emily@kilekuplaw.com)  
**Subject:** EMERSON VARIANCE: REQUEST TO RECONSIDER

Dear George....I would like to request that we reconsider the Emerson variance request based on the new information presented below. Please advise how we move forward. Thanks! Hope.

---

**From:** Jordan Rose  
**Sent:** Thursday, January 18, 2018 4:36 PM  
**To:** Hope Ozer  
**Cc:** Rebekah Pineda  
**Subject:** Emerson Variance Case; New Information

Board Member Ozer – I appreciate your willingness to potentially reconsider due to some new and quite impactful information that was not in any way shared at the hearing a few weeks ago. Since that time, we have learned that it is the Town's policy to establish a vehicular non-access easement along right-of-way for new subdivisions where it is adjacent to existing homes so as not to burden those homes with additional setbacks because of a road that only benefits the new subdivision. This is essentially an acknowledgement by the Town that those increased setbacks being imposed on adjacent property owners would constitute a hardship and lower their property value. With this information, the Board may be inclined to acknowledge the hardship, not as a need to move improvements like a pool or sport court but the very fact that a significant amount of property is lost with nothing gained. In addition, we learned that this is one of only 6 lots in all of the Town impaired by three roadways, which, if not corrected, will end up reducing the property size by a full 12,000 square feet. In other instances this hardship would be corrected. We will very much appreciate an opportunity to present new information if a motion to reconsider the Variance case is provided. Thank you again and let me know if you have any further questions or need more information. Jordan.

## Jordan R. Rose



7144 E Stetson Drive, Suite 300  
Scottsdale Arizona 85251  
Direct: 480.505.3939  
Fax: 480.505.3925  
Mobile: 602.369.4692

[roselawgroup.com](http://roselawgroup.com)  
[roselawgroupreporter.com](http://roselawgroupreporter.com)  
[social.roselawgroup.com](http://social.roselawgroup.com)

*RLG is Service*

*Winner "Best places to work in Arizona"*

SEP 29 2017

ICE - 3 - 1

.....

---

---

Carter W. Emerson  
Reverend Trust  
X by Carter W. Emerson  
SIGNATURE

PHONE #

PRINTED NAME

**X** \_\_\_\_\_  
SIGNATURE

PHONE #

**REPRESENTATIVE:**

Jordan Rose  
PRINTED NAME

X \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_

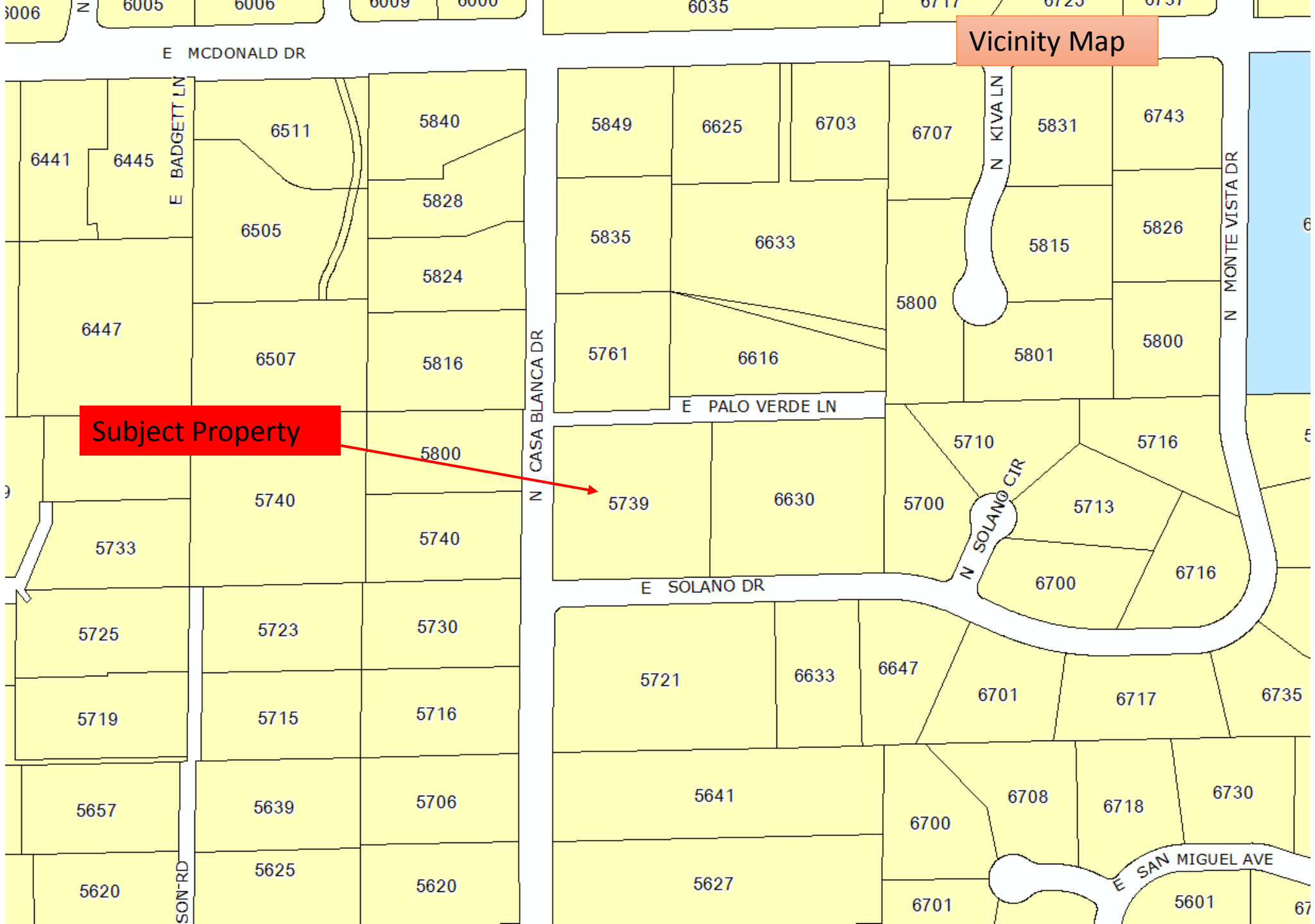
480.505.3925  
FAX #

STATE HARDSHIP INVOLVED OR GROUNDS FOR APPEAL TO THE BOARD OF ADJUSTMENT. (Please attach additional sheets as necessary).

\_\_\_\_\_

Vicinity Map

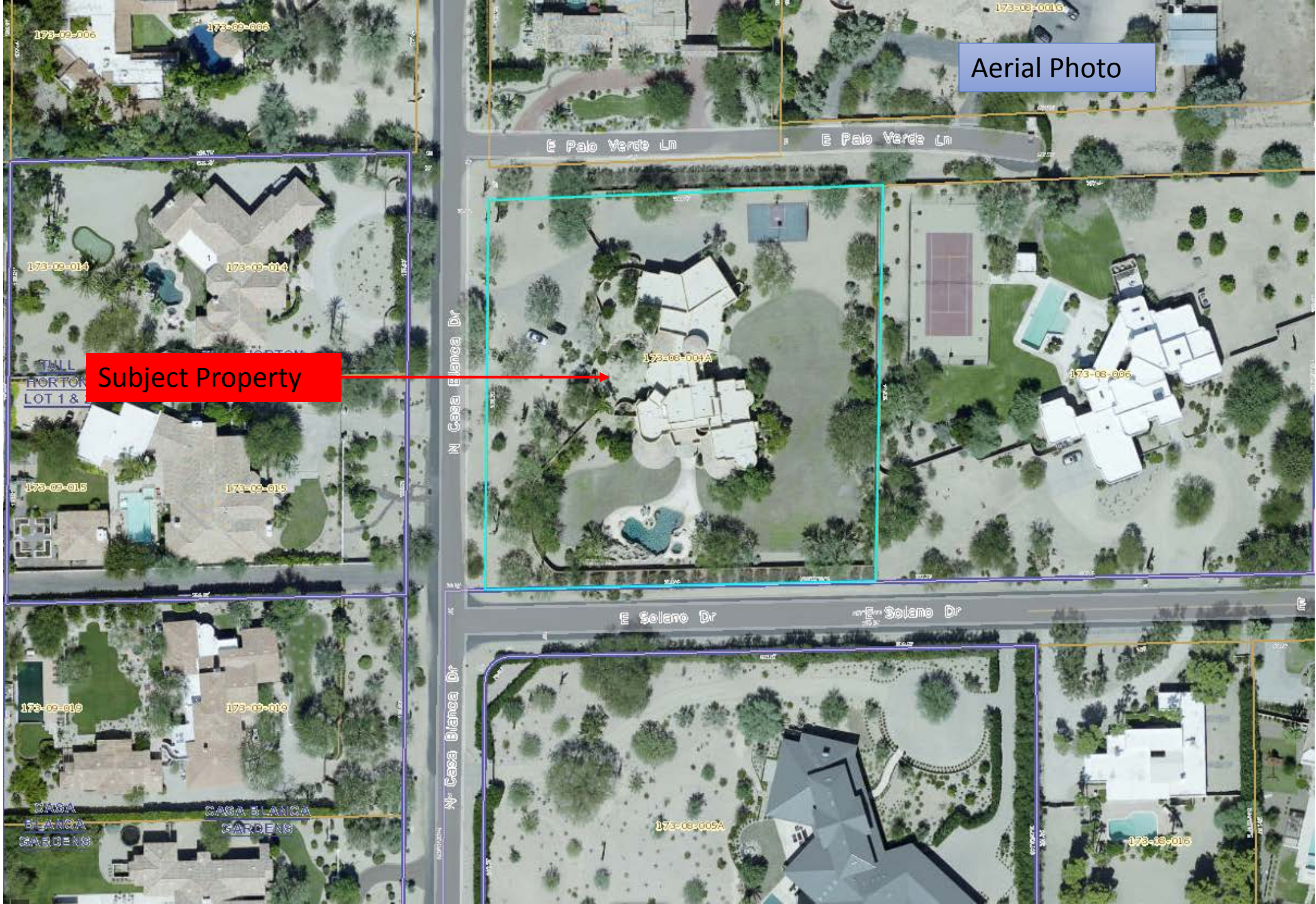
Subject Property





Aerial Photo

Subject Property







## Action Report

---

**File #:** 18-005

---

**TO:** Chair and Board of Adjustment

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** January 3, 2018

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Emerson Variance - 5739 N. Casa Blanca Drive (APN: 173-08-004A) Case No. BA-17-04

**RECOMMENDATION**

Staff recommends Motion "A", a motion to deny the variance request to allow existing non-conforming fence walls to remain and encroach into the setbacks.

**A. MOTION FOR DENIAL**

I move for **[denial]** of Case No. BA-17-04, a request by the Carter W. Emerson Revocable Trust, property owner of 5739 N. Casa Blanca Drive; for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow existing non-conforming fence walls to remain and encroach into the setbacks.

**Reasons for Denial:**

I find that the variance requested does not meet the variance criteria

**B. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-17-04, a request by the Carter W. Emerson Revocable Trust, property owner of 5739 N. Casa Blanca Drive; for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow existing non-conforming fence walls to remain and encroach into the setbacks. The variance shall be in compliance with the submitted plans and documents:

1. The Narrative, dated November 15, 2017 and prepared by Rose Law Group;
2. The Site Plan, prepared by Blochbeger Design and dated September 20, 2017; and
3. The Alta/NSPS Land Title Survey, prepared by Land Development Group and dated April 17, 2017.

**Reasons for Approval:**

I find that there are special circumstances, applicable to only the subject lot, meeting the variance criteria.

**BACKGROUND**

**Lot Conditions**

The property is zoned R-43 and is 91,478 square feet in size (2.10 acres). The property is square in shape and has streets along three sides. The front yard adjoins Casa Blanca Drive, the north side yard adjoins Palo Verde Drive, the south side yard adjoins Solano Drive.

**Lot History**

The subject property is not located in a subdivision and was annexed into the Town in 1961. Below is a list of improvements on the property:

- December 20, 1973. Permit for a single-family residence.
- March 22, 1974. Permit for a pool.
- June 12, 1979. Permit for a carport.
- November 3, 1987. Permit for a metal barn.
- December 31, 1997. Permit for masonry fence wall.
- August 14, 2002. Permit for a new single-family residence.
- July 23, 2003. Permit for a pool.
- October 8, 2003. Permit for fence walls.
- November 14, 2003. Permit for a basketball court.

Due to a new home that was constructed in 2002, the property owner was required to dedicate and improve the adjoining rights-of-way in accordance with the Town Code and General Plan. As a result of the right-of-way dedication, the existing north and south side fence walls became non-conforming in setback. Then Community Development Director Hamid Arshadi, noted that the fence walls can remain at their current location. However, in 2004, the Town updated the fence wall ordinance; in which the code (Section 2415) requires all non-conforming fence walls to meet current zoning requirements when remodeling more than 50% of the primary residence or constructing a new single-family residence. Since more than 50% of the house will be remodeled, the applicant is requesting a variance to keep the existing fence walls at their current location/setback.

**Request**

The applicant requests a variance to allow the existing non-conforming fence walls to remain. Per Section 2404, a side or rear yard with a street is limited to a 6' tall fence wall with a 20' setback from the property line. The subject property has two existing non-conforming fence walls. One existing 6' tall fence wall that is located in the north side yard and is setback 10.4' from the north property line (adjoining Palo Verde Drive). The other existing 6' tall fence wall is located in the south side yard and is setback 11' from the south property line (adjoining Solano Drive).

Per Section 2415 of the Town Zoning Ordinance, all non-conforming fence walls must meet current setback and height requirements when remodeling more than 50% of the house or building a new single-family residence. Since more than 50% of the house will be remodeled, the applicant is requesting a variance to keep the existing fence walls at their current location/setback.



**DISCUSSION/ FACTS:**

Variance criteria:

Town Code and Arizona Revised Statutes set criteria an applicant must meet before a Board of Adjustment may grant a variance request. If the Board finds an applicant meets **all** of these criteria, the Board may grant the variance. However, if the Board finds the applicant does not meet all of the criteria, the Board may not grant the variance. The following are staff's findings with regard to such variance criteria.

1. *"Such variance... will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variance under the circumstances." (Town Code Section 2-5-3(C)2).*

**Findings in Favor (FIFs):**

The existing fence walls are setback approximately 20' from the edge of the street, giving the appearance that the walls are compliant with the setback requirement.

**Findings Opposed (FOPs):**

There is no property hardship that warrants the request. The size, shape, and topography of the lot do not prevent the fence walls from being removed and reconstructed at the required setback.

2. *The "special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake..." (Town Code Section 2-5-3(C)4(b)).*

**FIFs:**

The hardship is not out of mistake or misunderstanding. The dedication of right-of-way in 2002 created a non-conforming setback for the north and south fence walls.

**FOPs:**

The applicant should be aware of all special circumstances on the property and plan any designs accordingly.

3. *"Such variance from ... the strict application of the terms of [the Zoning Ordinance] ... are in harmony with its general purposes and intents..." (Town Code Section 2-5-3(C)2).*

**FIFs:**

The intent of the fence ordinance is to provide safety, noise abatement, and security with minimal impact to visual openness and the environment. The existing walls provide security for the property and noise abatement from the surrounding three streets.

**FOPs:**

The request does not meet the intent of the code as other alternatives exist. The property is a large parcel that can accommodate fence walls at the required setback. The size, shape, and topography of the lot do not prevent the fence walls from meeting setbacks. Also, moving the wall at the required setback will provide additional visual openness the code seeks to maintain and preserve.

4. *"The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor..." (Town Code Section 2-5-3(C)4).*

**FIFs:**

The special circumstance is that the property adjoins three streets.

**FOPs:**

The request is self-imposed since the fence walls can be re-built to meet setback requirements. The property is oversized for its zoning classification (at 2.10 acres), the property is square in shape, and the lot is relatively flat. As a result, there are no characteristics of the lot that prevent the fence walls from meeting setback requirements.

5. *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." (Arizona Revised Statutes 9-462.06(G)(2)).*

**FIFs:**

None.

**FOPs:**

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. The size, shape, and topography of the lot do not prevent the applicant from removing the existing fence walls and constructing new code compliant fences.

6. *The variance would not "constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located." (Arizona Revised Statutes 9-462.06(G)(2)).*

**FIFs:**

The fence is existing and is located 20' from the edge of the street. Also, the neighboring property to the south has an existing fence that encroaches into the setback.

**FOPs:**

Except for the neighboring property to the south, all other properties in the area meet the setback requirements outlined in the Zoning Ordinance. Although a property adjoining three roadways is atypical, there are no property hardships (e.g. size, shape, and topography of the lot) that prevent the fence walls from meeting the 20' setback from property line.

---

**File #:** 18-005

---

**COMMENTS:** A neighboring property owner inquired about the application and stated he has no objection to the request.

**COMMUNITY IMPACT:** Staff received two letters of support from neighboring property owners.

**FISCAL IMPACT:** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo  
Application  
Narrative and Plan Set  
Noticing Materials

C: Nick Labadie (Applicant)  
Case File BA-17-04

# **5739 N. Casa Blanca Drive**

## **Variance Application**

A request to allow existing perimeter walls to remain as-is



**Property Address:**

5739 N. Casa Blanca Drive  
Paradise Valley, Arizona  
APN: 169-42-012A

**Prepared by:**

Jordan Rose  
Nick Labadie  
Rose Law Group pc  
7144 E. Stetson Drive, Suite 300  
Scottsdale, Arizona 85251  
480.505.3936

Submitted: September 29, 2017

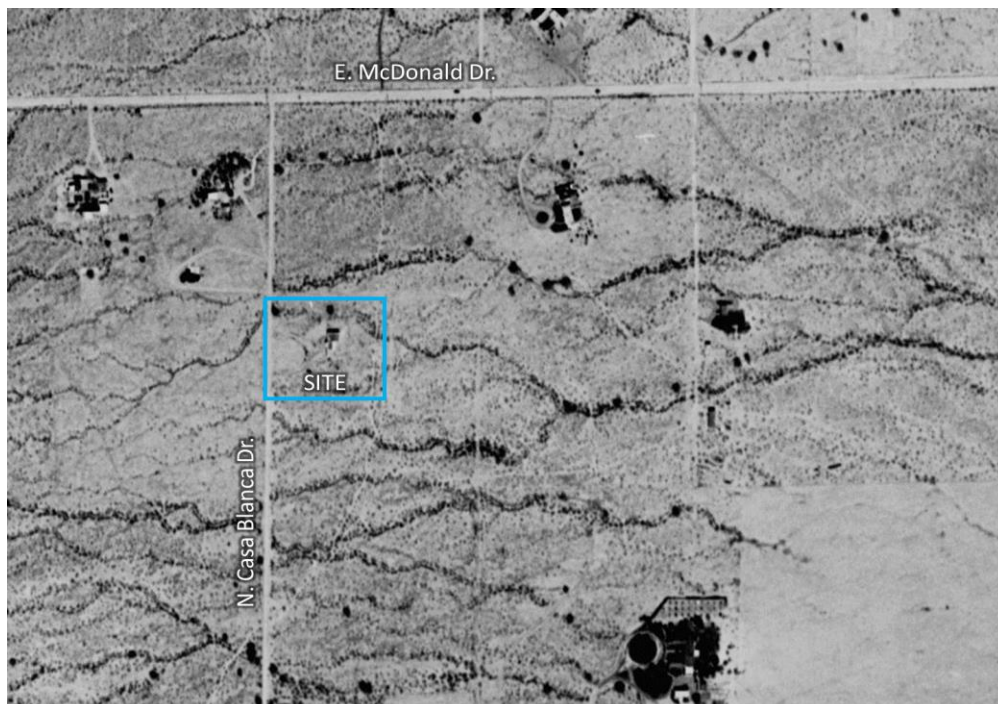
Resubmitted: November 15, 2017

### **Request**

This request is for a variance from Article XXIV, Section 2404(b)(2) and Table 2404A of the Town of Paradise Valley's Zoning Ordinance ("Ordinance") reducing the minimum side setback where adjacent to a local street to 10 feet where 20 feet is required at 5739 N. Casa Blanca Drive (the "Property"), located on the northeast corner of N. Casa Blanca Dr. and E. Solano Dr. and on the southeast corner of N. Casa Blanca Dr. and E. Palo Verde Dr. (see Exhibit A, Vicinity Map). This lot is unique as it appears to be one of only 6 lots in the entire Town of PV surrounded on three sides by roadway with increased setbacks for walls on all three sides. Notably, these unique characteristics were caused by the Town's actions, when it required ROW to be dedicated to create E. Solano Dr. and E. Palo Verde Dr. When this right-of-way ("ROW") was dedicated to the Town, it transformed the Property into a rare peninsula parcel surrounded on three sides by ROW without any provision for relief by right in the Ordinance. Were that ROW not dedicated, the existing walls would not only be legal conforming walls where they are today, they would be able to be on the Property line; the Property's setbacks would be greatly reduced, and the Property's buildable area would be significantly larger. None of the ROW was sought or requested by the Property owner. This variance is necessary to allow existing fully legally permitted walls, built almost 20 years ago, to remain as constructed and to relieve the hardship created on this property as a result of the lot being in the unusual situation of being surrounded on three sides by roadway.

### **History**

The County's records do not show an original plat for the Property, and it appears to be a metes and bounds parcel; however, the County's historical aerial photography shows a home on the Property as far back as 1949. As you can see in the photo below, at that time, there were no other properties on any side of the Property and only N. Casa Blanca Drive existing.



Aerial photo of Property, 1949 (Maricopa County GIS)



Ten years later by 1959, a handful of homes had been built in this area, including to the south, west, and east of the Property. The home to the east appears to have been accessing their lot via a driveway that ran along the north side of the Property, but does not appear to have been an actual ROW, as you can see in the photo below.



Aerial Photo of Property, 1959 (Maricopa County GIS)

By 1975, 16 years later, Desert Arroyos Subdivision was created (see Exhibit B, Desert Arroyos Final Plat) and Solano Road was created to provide secondary access to that new neighborhood. This effectively turned the Property into a corner lot, forcing an increase in side yard setback for walls to 20 feet from 0 feet.



Aerial Photo of Property, 1976 (Maricopa County GIS)



In 2002, the Property was redeveloped and new permits were approved for the new walls and structures, including the perimeter walls as they remain today. Then Community Development Director Hamid Arshadi specifically included in the approval, a condition that indicated only new structures (after what was included in that permit) would need to be in conformance with the Ordinance. If Mr. Arshadi had not intended these walls to be permitted even with new future construction, he surely would have explicitly said that. It is clear this was his intent, as the Town Code provides requirements for new structures to be in conformance with the Town Code. It also sets criteria (Sec. 2415(a)), for when conformance with the Ordinance is triggered. As written and issued, the approval of the walls is in their current location is perpetual and unconditional.

It is our belief that this special approval was given in return for the ROW, which the Property owner dedicated to the Town to create the roadway on the north boundary of the property, E. Palo Verde Dr., which would have otherwise not allowed for the walls to be built where they are today (see Exhibit C, Site Photos).

By creating E. Palo Verde Dr., the Town transitioned the Property from a Corner lot to a very unusual peninsula lot thereby imposing an additional 20 feet of setback along the north property line as well. The current owners are in the process of designing a remodel of the existing home (see Exhibit D, Site Plan) that will continue to improve the area and add to the number of beautiful homes that Paradise Valley is known for but would like to keep the walls as they are today. It is inequitable to require the owner of the Property to bear the entire burden (hardship) of relocating walls and losing buildable area solely to increase the value of a nearby property by improving access to it.



Aerial Photo of Property, 2003/2004 (Maricopa County GIS)



### **Meets Variance Criteria**

Approval of this request for a variance to allow the existing perimeter walls to remain will provide relief from the hardship on the Property that results from it being made an unusual peninsula lot by the Town. Below is a discussion of the legal justifications for the requested variance.

- 1. “Such variance...will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variance under the circumstances.” (Town Code Section 2-5-3(C)2).**

As discussed above, the Property is in the unique situation of being an unusual peninsula lot due to the creation of two new streets after the creation of the Property and ROW dedication later in the development. This lot appears to be one of only 6 lots in the entire Town that has this condition of being a peninsula lot with increased setbacks for walls on all three sides. There are roughly 5,720 lots in Paradise Valley, which makes these lots extremely rare at just 0.01% of the Town’s lots (see Exhibit E, Map of Comparable Peninsula Lots). Further, each of the other comparable peninsula lots were originally platted as peninsula lots, whereas the Property was made one by the Town’s creation of the adjacent roads. There are other cases of peninsula lots at the perimeter of subdivisions in Paradise Valley, however it is understood that it would be a burden on those lots to have increased setbacks on all three sides, so the Ordinance allows walls on lots at the perimeter of subdivisions to have a zero setback. This variance is requested to maintain the significant property rights that other properties in the R-43 zoning district and the other 99.99% of lots in Paradise Valley enjoy.

To alleviate this hardship, the Town need only allow existing, duly permitted walls to remain, which we believe was the intent of the Community Development Director’s handwritten approval at the time they were constructed.

- 2. The “special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake...” (Town Code Section 2-5-3(C)4(b)).**

This hardship does not arise out of misunderstanding or mistake. The situation the Property is currently in was created intentionally by the Town in its creation of the new streets but only after the Town agreed to preserve the current location of the walls. Accordingly, this was not done with the intent of creating a hardship for the Property but it was an unintended consequence. Nevertheless, any effort to require relocation of the walls (enforcement of increased setbacks) will result in a significant hardship, which can only be remedied by this variance, the remedy to which is contemplated and provided by the Ordinance in the form of this variance process. It even appears that the former Development Services Director agreed to allow the walls to remain in order to gain additional ROW dedication from the lot’s then owner. The lot has participated in helping the Town develop important roadway access in the past and should not now be forced to live without protection from those roadways.

3. **“Such variance from...the strict application of the terms of [the Zoning Ordinance]...are in harmony with its general purposes and intents...” (Town Code Section 2-5-3(C)2).**

The intent of the setback for walls is to create open space and avoid perimeter walls from being on the property line. This request is in harmony with that intent as the existing walls are setback from the pavement 26'-3" ft. on E. Palo Verde Dr. and 21'-0" ft. on E. Solano Dr. The north wall is 10.4 feet from the property line at its closest point, and the south wall is 11 feet to the southern property line at its closest point (see Exhibit F, Wall Detail). They have been in this location for almost 20 years, and forcing the owner to relocate those walls will not yield any meaningful benefit to the Town or the community at large, rather it will only impose burdens on the lot owner. Neither of these roads will be improved or widened as they are local streets far from a higher-level street. This street condition has served the Town and the surrounding residents well and is only a result of this lot's past participation in ROW dedication. The request and the preservation of the walls is and has been in harmony with the general purposes and intents of the Ordinance.

4. **“The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor...” (Town Code Section 2-5-3(C)4).**

Neither the Owner, nor its predecessor created this situation, rather, it was the Town's instigation of the ROW dedication that created this unique peninsula lot - the only one like it in Paradise Valley. No owner of the Property has at any point requested or wanted either E. Solano Dr. or E. Palo Verde Dr. to exist. It has been the result of surrounding development that they could not have stopped. Whether the ROW was dedicated as a result of a taking or given up as a requirement for the improvement of the surrounding properties, at no point did the Property owners wish to dedicate any ROW. The assurance that the permitted walls would be allowed to remain and only new construction would need to be in compliance with the Ordinance was necessary to not create the hardship we are now requesting be alleviated.

5. **“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.” (Arizona Revised Statutes 9-462.06(G)(2)).**

As discussed above, the Property is unique to almost all others in the Town as an R-43 zoned peninsula lot with increased setbacks for walls on all three sides, and unique to every single other lot in Paradise Valley as it was not originally so. The Property's location surrounded by ROW on 3 sides, when it was originally developed with ROW on just the west side, makes this a special circumstance. The fact that adjacent subdivisions and Town actions caused this special circumstance (as opposed to other peninsula lots that were always planned as such) exerts a hardship on the Property and a deprivation of property rights that is not felt by other lots, even peninsula lots. Without this variance from the strict interpretation of the Ordinance, the Property

would be the only lot in the Town that is required to have full setbacks for yards adjoining streets on three sides without ever having been intended or wanting to be. This significantly reduces the buildable area of the Applicant's lot, far more than any other R-43 lot in the Town.

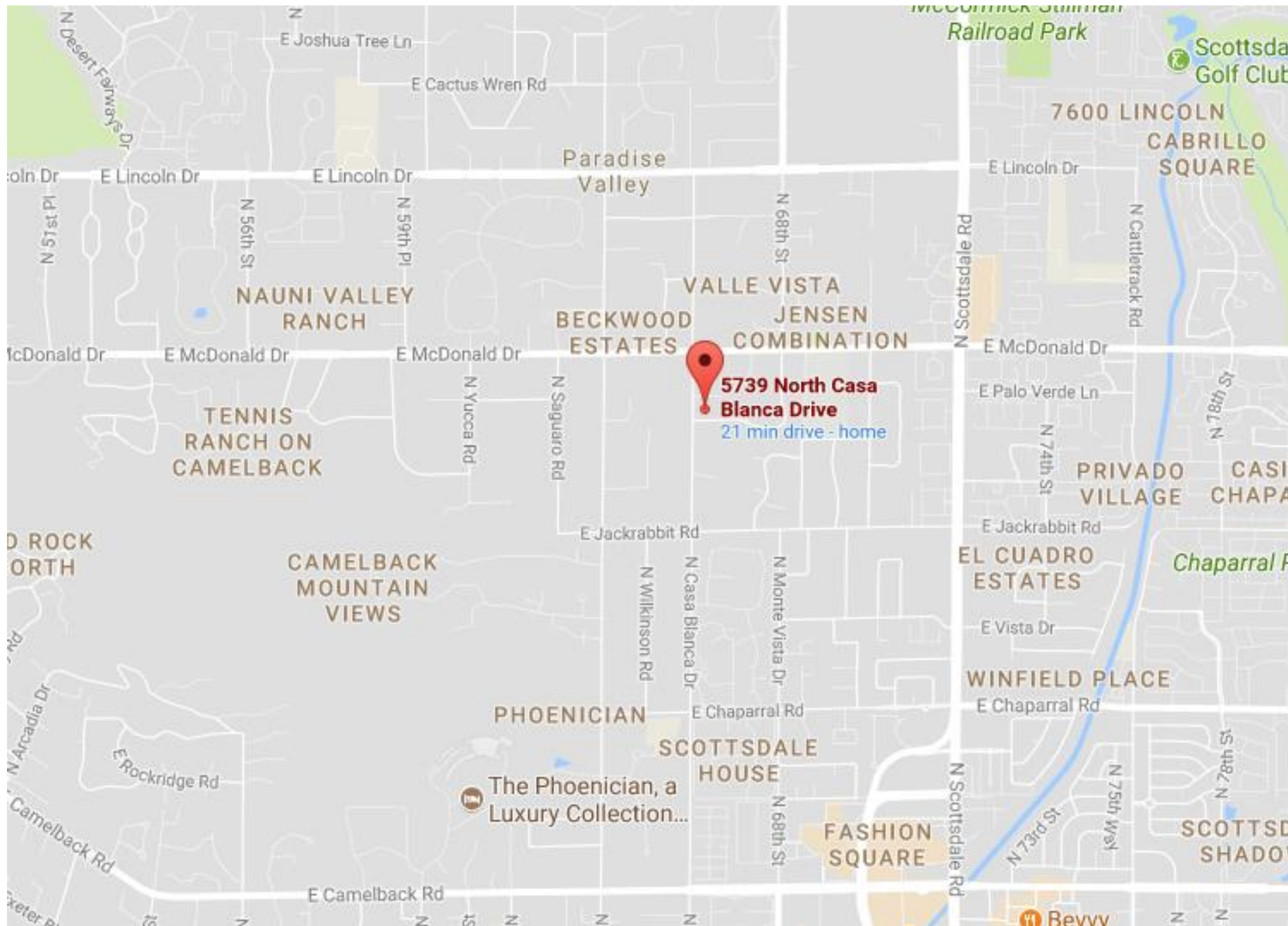
Additionally, the parcel immediately south of the Property enjoys the benefit of a subdivision perimeter wall on E. Solano Dr. that is permitted to be on the property line without any setback. Approving this variance would actually create a setback on the north side of E. Solano Dr. that is 10 feet larger than the south side.

- 6. The variance would not "constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located" (Arizona Revised Statutes 9-462.06(G)(2).**

Granting this request for a variance would not be a special privilege as 99.99% of the lots in the Town already enjoy this benefit. Rather, it would be a relief of the clear hardship allowing the Applicant to enjoy the equal benefit and use of the Property as other similarly zoned properties.

### **Conclusion**

We believe this request for a variance is justified and is the minimum necessary to alleviate the hardship because of the truly unique nature of the Property and the fact that it was created inadvertently by the establishment of two new streets and dedicated ROW on two sides of it. The request does not constitute a special privilege, is in harmony with the expressed intent of the Town Code and Zoning Ordinance, remedies a hardship that is not self-imposed, does not arise out of a misunderstanding, and would otherwise deprive the property owner of benefits afforded other property owners within the R-43 zoning district and almost every other property owner in Paradise Valley. We respectfully ask that you approve this request.



**Exhibit A: Vicinity Map**

Emerson Residence  
5739 N Casa Blanca Dr.  
APN: 173-08-004

Rose Law Group pc  
7144 E. Stetson Dr.,  
Suite 300  
480-505-3936



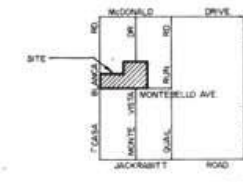


180-22

FINAL OF PLAT  
**DESERT ARROYOS**  
A SUBDIVISION OF PART OF THE N. 1/2, SEC. 15, T.2N., R.4E., G. & S.  
R.B. & M., MARICOPA COUNTY, ARIZONA

180-22

STATE OF ARIZONA  
County of Maricopa  
I hereby certify that the within instrument was filed and recorded at request of  
in Book 22, Page 22  
I have my hand and official seal on this 22nd day of June, 1975.  
County Recorder  
Dorothy McGowan



LOCATION MAP

Top of 1/2" 1 P. 20 (3) West of the SE Property Cor Elev 1323.77

BENCH MARK

Indicates corner this subdivision - Found or set 1/2" Iron Pipe unless otherwise indicated

40 Ft. Front Yard  
20 Ft. Side Yard  
40 Ft. Rear Yard

TYPICAL LOT SETBACKS

Scale: 1" = 60'

Indicates Public Utility Easement

EASEMENT DETAIL

WESTERN SKIES DEVELOPMENT, INC.  
4643 E. THOMAS RD.  
PHOENIX, ARIZONA  
DEVELOPER

APPROVALS

This plat was duly approved by the Mayor and City Council of the Town of Paradise Valley, Arizona this the 24th day of June, 1975.

By: Burt A. Anderson Mayor

City of Paradise Valley, Arizona  
Burt A. Anderson, Mayor  
City Council Members: [List of names]

Plat 180-22, P. 22 of 22 My Commission Expires: Mar 3, 1977

CERTIFICATION

This is to certify that this survey and subdivision of the land depicted in and subject to this subdivision plat as DESERT ARROYOS was made under my direction during the month of June, 1975, that this survey is correct, accurate, true and complete as shown herein; and that said monuments are sufficient to enable this survey to be retraced, and they have been located as described.

Registered Land Surveyor Date

PLANNERS

RICHARD CAVINESS-COOPER DOWNS & ASSOC.  
5417 E. Vernon  
Phoenix, Arizona Ph. 994-5943

CIVIL ENGINEERS

MCAUSLAND-PEARCE & ASSOC.  
2239 N. Hayden Rd.  
Scottsdale, Arizona Ph. 994-9508  
Job No. 965-C July, 1975

\* Side yard setback not adjacent to street shall be 20'.

CURVE DATA

NUMBER	RADIUS	ARC	DELTA	PI
1	288.43	125.16	024°51'43"	63.58
2	450.00	196.35	035°00'00"	59.76
3	140.00	299.23	128°00'00"	179.89
4	225.00	54.98	014°00'00"	27.63
5	250.00	61.03	014°00'00"	30.70
6	15.00	294.73	128°00'00"	142.61
7	425.00	195.44	025°00'00"	54.22
8	20.00	31.42	025°00'00"	20.00
9	45.00	30.56	025°00'00"	19.81
10	45.00	202.54	25°43'08"	18.27
11	45.00	30.56	025°00'00"	19.81
12	45.00	202.54	25°43'08"	18.27
13	313.43	107.77	019°41'59"	54.42
14	20.00	30.17	025°00'00"	19.36
15	283.43	114.31	024°51'43"	56.07
16	475.00	207.26	025°00'00"	105.31
17	165.00	293.74	127°00'00"	203.76
18	200.00	48.87	014°00'00"	24.56

NOTE

Drainage easements are for the purpose of allowing storm, flood and other waters to pass over, under or through the land set aside for the easement and nothing shall be constructed, planted or allowed to grow on this easement which would impede the flow of such waters, and the Town of Paradise, a Municipal Corporation of the State of Arizona, may, if it so desire, construct and/or maintain drain facilities in or under the land described in this easement. Access to this easement shall not be obstructed. Construction within the easements shall be limited to utilities.

DEDICATION

State of Arizona } SS  
County of Maricopa }

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SKIES DEVELOPMENT, INC., an Arizona Corporation, as sole owners, have subdivided under the name of DESERT ARROYOS, a part of the N. 1/2, Sec. 15, T.2N., R.4E., G.B.S.R.B. & M., Maricopa County, Arizona, and hereby publishes this plat as and for the plat of said DESERT ARROYOS, and hereby declares that said plat sets forth the location and gives the dimensions of the lots, streets and easements constituting same, and that each lot and street shall be known by the number or name given to each respectively on said plat, and WESTERN SKIES DEVELOPMENT, INC., hereby dedicates to the Town of Paradise Valley and the public for its use, the streets and easements shown on said plat and included in the above described premises.

IN WITNESS WHEREOF WESTERN SKIES DEVELOPMENT, INC., as sole owners, hereunto set their signatures.

Secretary

The undersigned trustee, under deeds of trust recorded in Docket 444, page 22 and Docket 444, page 22, hereby ratifies and approves the dedication hereon.

ARIZONA TITLE INSURANCE & TRUST COMPANY

Vice President

ACKNOWLEDGEMENTS

State of Arizona } SS  
County of Maricopa }

On this the 22nd day of June, 1975, before me, the undersigned officer, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he as secretary of WESTERN SKIES DEVELOPMENT, INC., an Arizona Corporation, as sole owners, executed the foregoing instrument for purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public My Commission Expires

State of Arizona } S.S.  
County of Maricopa }

On this the 22nd day of June, 1975, before me, the undersigned officer, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed in the foregoing instrument, and acknowledged that he as Vice President of ARIZONA TITLE INSURANCE & TRUST COMPANY, an Arizona Corporation, as trustee, executed the foregoing instrument for purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public My Commission Expires

180-22

180-22

Exhibit B: Desert Arroyos Plat

Emerson Residence  
5739 N Casa Blanca Dr.  
APN: 173-08-004

Rose Law Group pc  
7144 E. Stetson Dr.,  
Suite 300  
480-505-3936





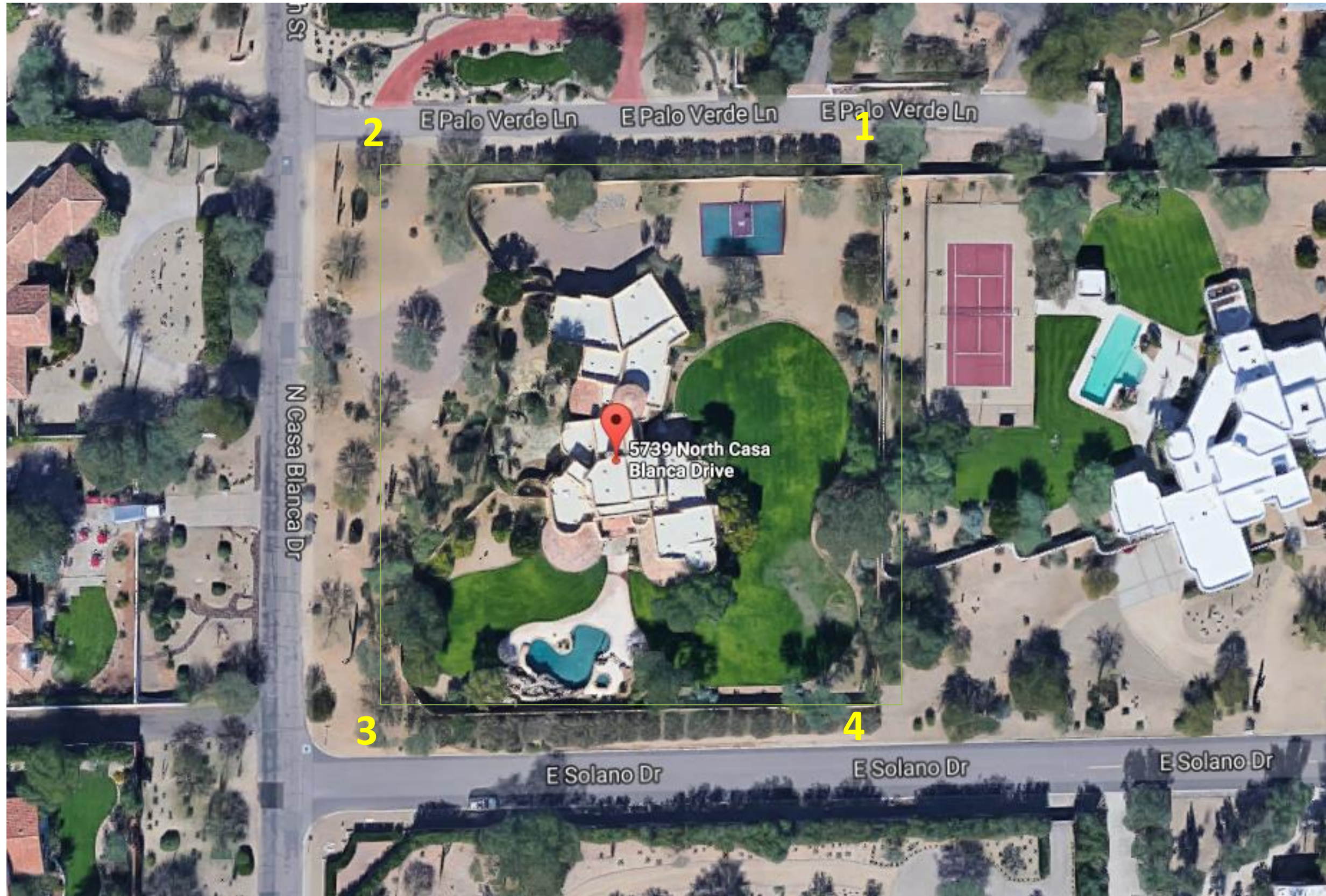


Exhibit C: Site Photos Index

Emerson Residence  
5739 N Casa Blanca Dr.  
APN: 173-08-004





Looking North from the NE corner of the property.



Looking South from the NE corner of the property.



Looking West from the NE corner of the property.



Looking East from the NE corner of the property.

**Exhibit C: Site Photos - from NE Corner Location #1**

**Emerson Residence**

5739 N Casa Blanca Dr.

APN: 173-08-004

Rose Law Group pc  
7144 E. Stetson Dr., Suite 300  
480-505-3936





Looking North from the NW corner of the property.



Looking South from the NW corner of the property.



Looking West from the NW corner of the property.



Looking East from the NW corner of the property.

**Exhibit C: Site Photos - from NW Corner Location #2**

Emerson Residence  
5739 N Casa Blanca Dr.  
APN: 173-08-004





Looking North from the SW corner of the property.



Looking South from the SW corner of the property.



Looking West from the SW corner of the property.



Looking East from the SW corner of the property.

**Exhibit C: Site Photos - from NW Corner Location #3**

Emerson Residence  
5739 N Casa Blanca Dr.  
APN: 173-08-004

Rose Law Group pc  
7144 E. Stetson Dr., Suite 300  
480-505-3936





Looking North from the SE corner of the property.



Looking South from the SE corner of the property.



Looking West from the SE corner of the property.



Looking East from the SE corner of the property.

**Exhibit C: Site Photos - from NW Corner Location #4**

**Emerson Residence**

5739 N Casa Blanca Dr.

APN: 173-08-004

Rose Law Group pc  
7144 E. Stetson Dr., Suite 300  
480-505-3936



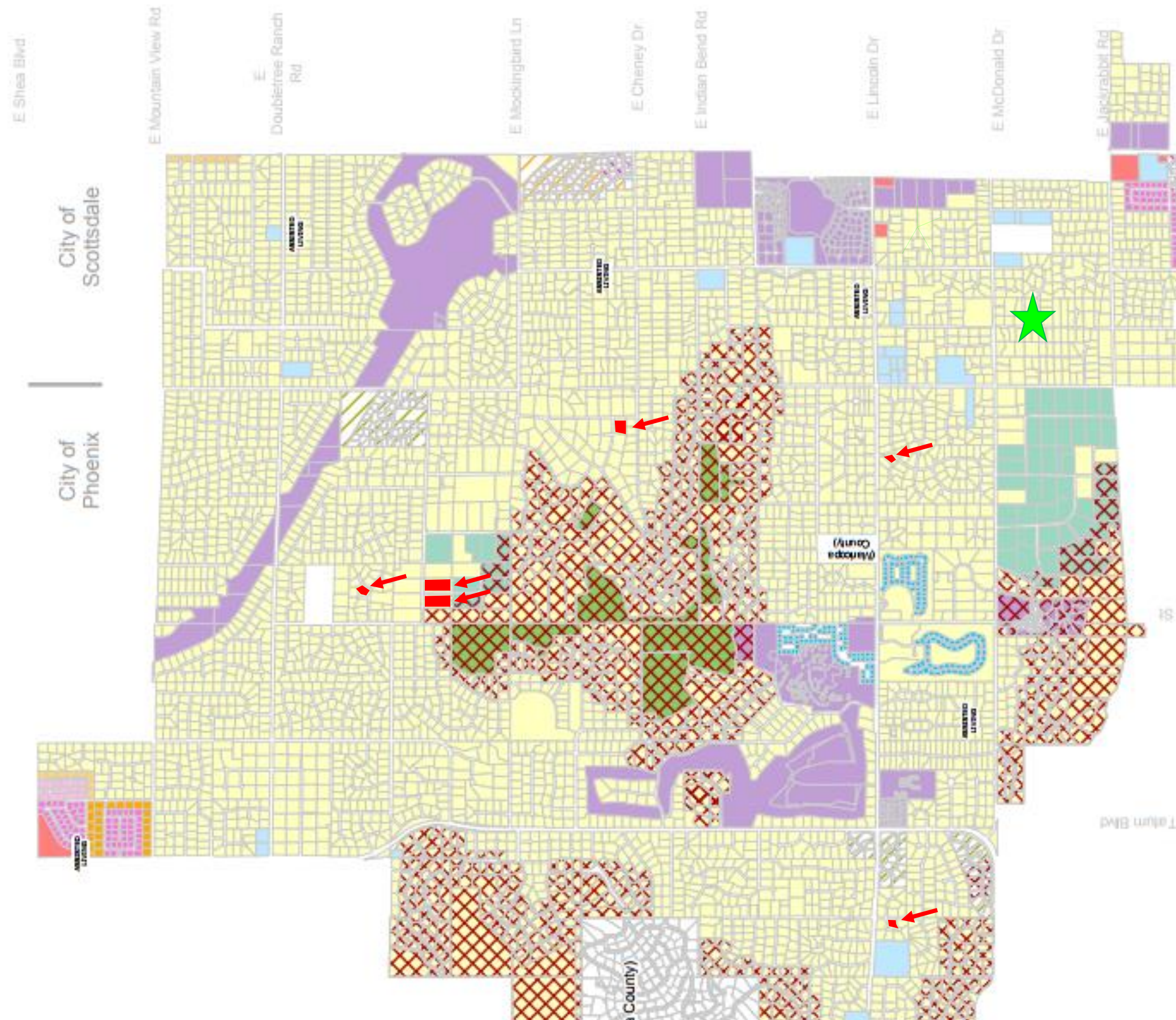


01 SITE PLAN  
SCALE: 1/16"=1'-0"

Revision:
Project #:
Date: 9-20-17
Issued For:
Drawn By:

**Blochberger  
DESIGN**  
5440 N. 46th Place  
Phoenix, AZ 85018  
jimblochberger@cox.net  
phone: 602.692.9081  
fax: 602.957.6018





★ Subject property – the only peninsula lot in Paradise Valley not platted as such and subject to increased setbacks on three sides.

■ Peninsula Lot

### Legend Zoning

R-175	R-35	R-18
R-43	R-35CP	R-18A
R-43CP	R-35A	R-10
R-18CP		
SUP-P Special Use Permit- Public		
OSP- Open Space Preserve		
SUP-R Special Use Permit- Resort		
SUP-O Special Use Permit- Medical		
Hillside		
Public School		

Revised 04/24/13 15:30

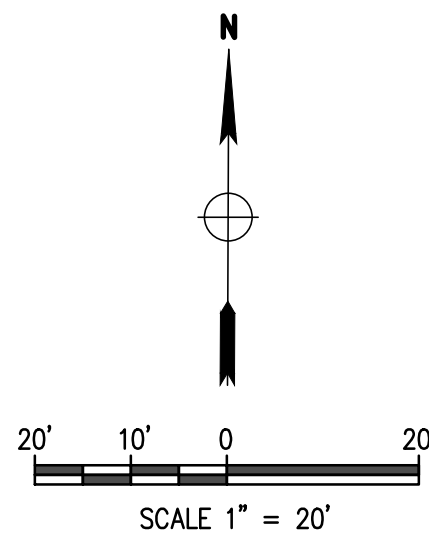
**Exhibit E: Map of Comparable Peninsula Lots**

Emerson Residence  
5739 N Casa Blanca Dr.  
APN: 173-08-004

Rose Law Group pc  
7144 E. Stetson Dr., Suite  
300  
480-505-3936







INVERGORDON ROAD

FOUND BRASS CAP  
IN HANDHOLE  
NW SEC 15, T2N, R4E

N88°05'21"E 1314.76'

FOUND BRASS CAP FLUSH  
NW COR, NE1/4, NW1/4  
SEC 15, T2N, R4E

MCDONALD DRIVE

N88°05'21"E 1314.76'

FOUND BRASS CAP  
IN HANDHOLE  
N1/4 COR SEC 15,  
T2N, R4E

MOCKINGBIRD LANE

FOUND 1" IRON  
PIPE NW COR,  
SW1/4, NE1/4,  
NW1/4 SEC 15,  
T2N, R4E



JACKRABBIT ROAD

FOUND 1" IRON  
PIPE

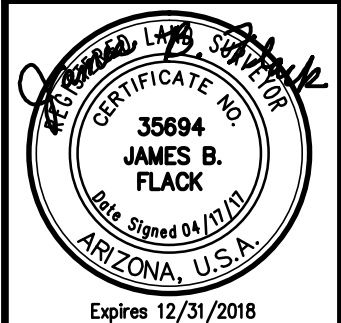
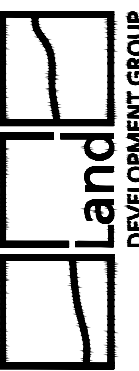
6630 E SOLANO DR  
PARADISE VALLEY, AZ 85253  
APN 173-08-006  
ZONING R-43

REVISIONS:	DATE:	SCALE: 1"=20'	DATE: 04/17/17
		DESIGNED BY: JF	JOB: 1704039
		DRAWN BY: DW	VERSION: 1.1
		CHECKED BY: NP	PLOT DATE: 04/17/17

ALTA/NSPS LAND  
TITLE SURVEY

PARCEL NO. 173-08-004A  
5739 N CASA BLANCA DR  
PARADISE VALLEY, AZ 85253

P 602 889 1984 | F 602 445 9482  
8808 N CENTRAL AVE., SUITE 288  
PHOENIX, AZ 85020  
PHOENIX @ LOGGING.COM





**George Burton**

---

**Subject:** FW: Variance Meeting

**From:** Fife Symington [

**Sent:** Wednesday, December 20, 2017 9:54 AM

**To:** Eva Cutro <[ecutro@paradisivalleyaz.gov](mailto:ecutro@paradisivalleyaz.gov)>

**Subject:** Variance Meeting

Dear Members of the Board,

I am writing to you, as a resident of Paradise Valley, to express my strong support for the variance being requested at 5739 N. Casa Blanca Drive. I live at 5721 N. Casa Blanca, due south of the property in question. We love this neighborhood and only want it to stay as it is, which is what this variance would permit. I have had a chance to review the application and believe that more than just being a reasonable request, the variance is necessary for the Emerson's to be able to enjoy the same property rights as everyone else in the neighborhood. It is unfortunate that their property has been chipped away to provide access to other properties and now it may cost them dearly if they are not granted this variance.

Approving this request will only have a positive effect on our neighborhood by reaffirming that we would all like to see its character, look and feel remain as it is today. We have all chosen to purchase homes in this area because we love it and have no interest in seeing existing walls replaced with new walls or anything about the look of the street to change. The Emerson's wall has been there since before I bought my property 11 years ago. It is aesthetically pleasing, and forcing them to tear it down would be utterly pointless and a major inconvenience for the whole neighborhood.

I hope that you will agree with me that this application meets all the required criteria for approval, will maintain the character of our neighborhood, and is only fair to preserve the property rights of the Emersons.

Sincerely,

Fife Symington

Fife Symington

December 15, 2017

Board of Adjustment  
Town of Paradise Valley  
6401 E Lincoln Dr.  
Paradise Valley, AZ 85253

Dear Members of the Board,

My name is Drew Brown and I live at 5219 North Casa Blanca Drive, Paradise Valley, AZ 85253. I am writing to you today because I support the variance requested by my neighbors at 5739 North Casa Blanca Drive, Paradise Valley, AZ 85253 and I believe you should too. Approving this variance is important not only to the Emerson's, but to the neighborhood as a whole.

This variance would allow the walls to stand as they are and as they have for decades now. There is no reason to now require they be moved or changed in any way. My family and the rest of our neighbors have shared these streets for years and we are happy with the way things are. We would prefer not to see that unnecessary changes are being made when there were no issues.

The Emerson's have a right to enjoy their property privately just like the rest of us, and approving this variance will honor that right. Please consider the Emerson's and the neighborhood's interest in preserving the tranquility of our neighborhood when making your determination. We, as a community, share and respect each other's property rights and we want the same for the Emerson's.

Sincerely,  
  
Drew Brown

cc: ✓ Eva Cutro, Community Development Director  
ecutro@paradisevalleyaz.gov



# Town of Paradise Valley

6401 E Lincoln Dr  
Paradise Valley, AZ 85253

## Minutes

### Board of Adjustment

---

Wednesday, January 3, 2018

5:30 PM

Council Chambers

---

#### 1. CALL TO ORDER

The meeting was called to order at 5:30 p.m.

##### Staff Members Present

Town Attorney Andrew Miller  
Community Development Director Eva Cutro  
Planner George Burton

#### 2. ROLL CALL

**Present** 6 - Chairperson Emily Kile  
Board Member Catherine Kauffman  
Board Member Eric Leibsohn  
Board Member Jon Newman  
Board Member Hope Ozer  
Board Member Quinn Williams

**Absent** 1 - Board Member Rick Chambliss

#### 3. EXECUTIVE SESSION

None

#### 4. STUDY SESSION ITEMS

##### **A. 18-007 Emerson Variance – 5739 N Casa Blanca Drive (APN: 173-08-004A) Case No. BA-17-04**

George Burton, Planner, presented the history on this application, noting that Right-of-Way was dedicated and the walls became non-conforming due to decreased setbacks. The applicant is now proposing a remodel over 50% and the Town Code requires that all walls shall be brought into conformance. The applicant is requesting a variance to allow the non-conforming walls to remain. The north wall is 10.4 feet from the property line and the south wall is 11 feet from the property line. The Code requires a 20-foot setback. Staff is recommending denial of this application due to the lack of a hardship on this property.

It was noted that the location of the wall will not impact the location of the home improvements. Three letters of support were received. There was discussion regarding the pool. It was noted that the wall may be in the pool if it is relocated. However, the pool will also be remodeled. The applicant



explained that there was no Right-of-Way along Palo Verde prior to the applicant dedicating it in 2002.

**B. 18-008      Holyoak Variance – 6641 E Ironwood Drive (APN: 174-36-004)  
Case No. BA-17-045**

George Burton, Planner, provided the history on this request. He noted this is a variance request to allow a new wall at the south property line along Mockingbird Lane. The wall is proposed at 6'3". The Code allows a 6' wall at a 20' setback along a ROW. It was noted that the adjoining properties have walls at the property line. Staff is recommending denial of this application due to the lack of a property hardship necessitating a variance.

There was discussion regarding whether the adjoining walls were part of a subdivision wall. There was no proof of that, but since this property did not have this wall it was not determined if the adjoining lots have a subdivision wall.

**5. PUBLIC HEARINGS**

**A. 18-007      Emerson Variance – 5739 N Casa Blanca Drive (APN: 173-08-004A)  
Case No. BA-17-04**

Cameron Carter, Rose Law Group, presented for the applicant. Mr. Carter explained that this lot is unique because it is a peninsula lot with roads that were created after the home was constructed and that the lot developed over 70 years ago.

Arshadi, In 2002 the lot was redeveloped and Right-of-Way (ROW) was dedicated. Mr. then Community Development Director, issued a letter stating that all new structures must be in conformance with the Town Code. At that time the wall setback was 10' and the walls were built in conformance. In 2004 the Code was amended to require a 20' setback. The Emersons purchased the property a year ago.

The applicant believes this lot is unique as it is the only peninsula lot in the Town that is not in a subdivision. The distance from the ROW pavement is over 20', giving the appearance of a greater setback. The conditions are not self-imposed since they were created due to required roadway dedications.

There was discussion of the proposed plan that was included in the packet. It was noted that this shows a new pool and a substantial remodel. Mr. Carter noted that this is not a final plan. Mr. Blockberger, architect, gave additional information on the remodel. It was noted that this is an oversized lot at 2 plus acres. The applicant noted that they have a 40' main house setback on all sides.

The Board discussed whether there is a true hardship on this property. Mr. Blockberger stressed that moving the walls will greatly affect the existing Improvements, including the pool and basketball court. Mr. Carter added that the uniqueness of this lot does not give the homeowner the same rights

as other properties in the Town.

There was discussion of changing the walls to view fences, which could remain at their current setbacks.

It was also noted that the pool and sport court would have to be relocated to meet setbacks if they are remodeled by more than 50%.

At 6:38 pm the meeting was opened for public comment.

Fife Symington - spoke in favor of the variance request due to the lot having roads on three sides. He is the immediate neighbor and believes the current wall is aesthetically pleasing and the landscaping mature.

At 6:45 the public comment was closed.

Board Member Leibsohn made a motion for denial. Board Member Kauffman seconded the motion. Board Member Williams is in favor of the variance due to the uniqueness of the lot and because the walls are existing. Board Member Leibsohn believes that other options exist for this homeowner. Board Member Williams believes denying this discourages people improving their property. Chairman Kile believes this is a tough case. Board Member Williams asked if the Mr. Arshadi letter gave the applicant any vested rights. Mr. Miller does not believe it gives any vested rights.

**The motion was made by Board Member Leibsohn, seconded by Board Member Kauffman, to deny the variance request. The motion carried by the following vote:**

**Aye** 5 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, and Chair Kile.

**Nay** 1 - Board Member Williams

**Absent** 1 - Board Member Chambliss

**A. 18-008      Holyoak Variance – 6641 E Ironwood Drive (APN: 174-36-004)  
Case No. BA-17-05**

Wendy Riddell, Berry and Riddle, presented for the applicant. She stated that the applicant wants to match the existing wall that exists to the east and west of the property. The applicant would like to secure the property with the wall as it is a safety risk. This property is the only gap in a continuous wall.

At 7:06 the public hearing was opened.

Joe Panter, a neighbor, stated that he has wanted that wall built for 25 years to close the gap. He is in support of the variance request.

Susan Rand, HOA president, stated that the HOA has voted to recommend

approval to the Board of Adjustment. It is a safety concern because a car could drive through this gap. It would be nice if it continued to close the gap. There was discussion that there are areas of view fence where a large wash passes through. Susan Rand stated that the wall is maintained by the HOA.

Walter Binsom, a 39 year resident and member of HOA, stated that he is in favor of the request as long as it matches the walls to the east and west. It should also provide noise mitigation for the owner.

At 7:11 pm the meeting was closed to the public.

Board Member Ozer made a motion for approval of the variance based upon the special circumstances noted in the narrative and that the wall will match the height of the existing walls adjoining it and not to exceed a height of 6' tall. Board Member Leibsohn seconded the motion. All in favor.

**The motion was made by Board Member Ozer, seconded by Board Member Leibsohn, to approve the variance request. The motion carried by the following vote:**

**Aye** 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

**Absent** 1 - Board Member Chambliss

## **B. ACTION ITEMS**

None

## **C. CONSENT AGENDA**

**A. 18-013 Approval of the December 6, 2017 Board of Adjustment Meeting Minutes**

**A. 17-195 Approval of the April 12, 2017 Board of Adjustment Minutes**

**A motion was made by Board Member Leibsohn to approve the April 12, 2017 minutes and April 5, 2017 minutes as amended. Seconded by Board Member Newman. The motion carried by the following vote:**

**Aye** 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

**Absent** 1 - Board Member Chambliss

## **D. STAFF REPORT**

None.

## **E. PUBLIC BODY REPORTS**

None

## **F. FUTURE AGENDA ITEMS**

## **G. ADJOURNMENT**

A motion was made at 7:15 p.m. by Board Member Williams and seconded by Board Member Kauffman, to adjourn the meeting. The motion carried by the following vote:

**Aye** 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

**Absent** 1 - Board Member Chambliss

### **Paradise Valley Board of Adjustment**

By: \_\_\_\_\_  
Eva Cutro, Secretary





# Town of Paradise Valley

6401 E Lincoln Dr  
Paradise Valley, AZ 85253

## Action Report

---

**File #:** 18-106

---

**TO:** Chair and Board of Adjustment

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** January 3, 2018

**CONTACT:**  
George Burton, 480-348-3525

**AGENDA TITLE:**  
Approval of the January 3, 2018 Board of Adjustment Minutes



# Town of Paradise Valley

6401 E Lincoln Dr  
Paradise Valley, AZ 85253

## Minutes

### Board of Adjustment

---

Wednesday, January 3, 2018

5:30 PM

Council Chambers

---

#### 1. CALL TO ORDER

The meeting was called to order at 5:30 p.m.

##### Staff Members Present

Town Attorney Andrew Miller  
Community Development Director Eva Cutro  
Planner George Burton

#### 2. ROLL CALL

**Present** 6 - Chairperson Emily Kile  
Board Member Catherine Kauffman  
Board Member Eric Leibsohn  
Board Member Jon Newman  
Board Member Hope Ozer  
Board Member Quinn Williams

**Absent** 1 - Board Member Rick Chambliss

#### 3. EXECUTIVE SESSION

None

#### 4. STUDY SESSION ITEMS

##### **A. 18-007 Emerson Variance – 5739 N Casa Blanca Drive (APN: 173-08-004A) Case No. BA-17-04**

George Burton, Planner, presented the history on this application, noting that Right-of-Way was dedicated and the walls became non-conforming due to decreased setbacks. The applicant is now proposing a remodel over 50% and the Town Code requires that all walls shall be brought into conformance. The applicant is requesting a variance to allow the non-conforming walls to remain. The north wall is 10.4 feet from the property line and the south wall is 11 feet from the property line. The Code requires a 20-foot setback. Staff is recommending denial of this application due to the lack of a hardship on this property.

It was noted that the location of the wall will not impact the location of the home improvements. Three letters of support were received. There was discussion regarding the pool. It was noted that the wall may be in the pool if it is relocated. However, the pool will also be remodeled. The applicant

explained that there was no Right-of-Way along Palo Verde prior to the applicant dedicating it in 2002.

**B. 18-008      Holyoak Variance – 6641 E Ironwood Drive (APN: 174-36-004)  
Case No. BA-17-045**

George Burton, Planner, provided the history on this request. He noted this is a variance request to allow a new wall at the south property line along Mockingbird Lane. The wall is proposed at 6'3". The Code allows a 6' wall at a 20' setback along a ROW. It was noted that the adjoining properties have walls at the property line. Staff is recommending denial of this application due to the lack of a property hardship necessitating a variance.

There was discussion regarding whether the adjoining walls were part of a subdivision wall. There was no proof of that, but since this property did not have this wall it was not determined if the adjoining lots have a subdivision wall.

**5. PUBLIC HEARINGS**

**A. 18-007      Emerson Variance – 5739 N Casa Blanca Drive (APN: 173-08-004A)  
Case No. BA-17-04**

Cameron Carter, Rose Law Group, presented for the applicant. Mr. Carter explained that this lot is unique because it is a peninsula lot with roads that were created after the home was constructed and that the lot developed over 70 years ago.

Arshadi, In 2002 the lot was redeveloped and Right-of-Way (ROW) was dedicated. Mr. then Community Development Director, issued a letter stating that all new structures must be in conformance with the Town Code. At that time the wall setback was 10' and the walls were built in conformance. In 2004 the Code was amended to require a 20' setback. The Emersons purchased the property a year ago.

The applicant believes this lot is unique as it is the only peninsula lot in the Town that is not in a subdivision. The distance from the ROW pavement is over 20', giving the appearance of a greater setback. The conditions are not self-imposed since they were created due to required roadway dedications.

There was discussion of the proposed plan that was included in the packet. It was noted that this shows a new pool and a substantial remodel. Mr. Carter noted that this is not a final plan. Mr. Blockberger, architect, gave additional information on the remodel. It was noted that this is an oversized lot at 2 plus acres. The applicant noted that they have a 40' main house setback on all sides.

The Board discussed whether there is a true hardship on this property. Mr. Blockberger stressed that moving the walls will greatly affect the existing Improvements, including the pool and basketball court. Mr. Carter added that the uniqueness of this lot does not give the homeowner the same rights

as other properties in the Town.

There was discussion of changing the walls to view fences, which could remain at their current setbacks.

It was also noted that the pool and sport court would have to be relocated to meet setbacks if they are remodeled by more than 50%.

At 6:38 pm the meeting was opened for public comment.

Fife Symington - spoke in favor of the variance request due to the lot having roads on three sides. He is the immediate neighbor and believes the current wall is aesthetically pleasing and the landscaping mature.

At 6:45 the public comment was closed.

Board Member Leibsohn made a motion for denial. Board Member Kauffman seconded the motion. Board Member Williams is in favor of the variance due to the uniqueness of the lot and because the walls are existing. Board Member Leibsohn believes that other options exist for this homeowner. Board Member Williams believes denying this discourages people improving their property. Chairman Kile believes this is a tough case. Board Member Williams asked if the Mr. Arshadi letter gave the applicant any vested rights. Mr. Miller does not believe it gives any vested rights.

**The motion was made by Board Member Leibsohn, seconded by Board Member Kauffman, to deny the variance request. The motion carried by the following vote:**

**Aye** 5 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, and Chair Kile.

**Nay** 1 - Board Member Williams

**Absent** 1 - Board Member Chambliss

**A. 18-008      Holyoak Variance – 6641 E Ironwood Drive (APN: 174-36-004)  
Case No. BA-17-05**

Wendy Riddell, Berry and Riddle, presented for the applicant. She stated that the applicant wants to match the existing wall that exists to the east and west of the property. The applicant would like to secure the property with the wall as it is a safety risk. This property is the only gap in a continuous wall.

At 7:06 the public hearing was opened.

Joe Panter, a neighbor, stated that he has wanted that wall built for 25 years to close the gap. He is in support of the variance request.

Susan Rand, HOA president, stated that the HOA has voted to recommend



approval to the Board of Adjustment. It is a safety concern because a car could drive through this gap. It would be nice if it continued to close the gap. There was discussion that there are areas of view fence where a large wash passes through. Susan Rand stated that the wall is maintained by the HOA.

Walter Binsom, a 39 year resident and member of HOA, stated that he is in favor of the request as long as it matches the walls to the east and west. It should also provide noise mitigation for the owner.

At 7:11 pm the meeting was closed to the public.

Board Member Ozer made a motion for approval of the variance based upon the special circumstances noted in the narrative and that the wall will match the height of the existing walls adjoining it and not to exceed a height of 6' tall. Board Member Leibsohn seconded the motion. All in favor.

**The motion was made by Board Member Ozer, seconded by Board Member Leibsohn, to approve the variance request. The motion carried by the following vote:**

**Aye** 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

**Absent** 1 - Board Member Chambliss

## **B. ACTION ITEMS**

None

## **C. CONSENT AGENDA**

**A. 18-013 Approval of the December 6, 2017 Board of Adjustment Meeting Minutes**

**A. 17-195 Approval of the April 12, 2017 Board of Adjustment Minutes**

**A motion was made by Board Member Leibsohn to approve the April 12, 2017 minutes and April 5, 2017 minutes as amended. Seconded by Board Member Newman. The motion carried by the following vote:**

**Aye** 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

**Absent** 1 - Board Member Chambliss

## **D. STAFF REPORT**

None.

## **E. PUBLIC BODY REPORTS**

None

## **F. FUTURE AGENDA ITEMS**

## **G. ADJOURNMENT**

A motion was made at 7:15 p.m. by Board Member Williams and seconded by Board Member Kauffman, to adjourn the meeting. The motion carried by the following vote:

**Aye** 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

**Absent** 1 - Board Member Chambliss

### **Paradise Valley Board of Adjustment**

By: \_\_\_\_\_  
Eva Cutro, Secretary