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TO: City Council
FROM: Amelia Domby, Senior Planner
DATE: June 20, 2024
RE: **Mohamad Hasan’s Appeal of the May 9, 2024, Hearing Officer Denial of his Requested Variance for his Property located at 9616 E. 33rd Lane, Yuma, Arizona.**

Executive Summary

This appeal concerns Mr. Mohamad Hasan’s variance application, VAR-42542-2024, in which Mr. Hasan seeks a variance to increase the allowable fence height from 30 inches to 7 feet in the Recreation Vehicle Subdivision (RVS) District, for his property located at 9616 E. 33rd Lane (“Property”). Within this zoning district, the maximum fence height within the front yard setback or visibility triangle is 30 inches. This Property is located within the Vista Del Sol Unit No. 1 Subdivision.

Mr. Hasan constructed an addition to the existing brick wall within the front yard setback, resulting in a 7-foot-tall wall along the front Property line. After Mr. Hasan began the construction of the wall, a code enforcement case was initiated (CODE-BS-009089-2024). On March 3, 2024, Mr. Hasan was mailed a notice of violation for the construction of a 7-foot-tall wall within the front yard setback.

After receiving the notice of violation, Mr. Hasan submitted a variance application to increase the allowable fence height in the front yard setback from 30 inches to 7 feet to keep the newly constructed wall along the front Property line.

On May 9, 2024, the Hearing Officer held a hearing on Mr. Hasan’s request for a variance. City Staff filed a report with the Hearing Officer and recommended denial of the request, noting that the applicants request for a variance failed to meet the criteria of §154-03.04(D) of the Yuma City Code. After taking testimony on the variance application, the Hearing Officer denied the variance request.

Pursuant to Yuma City Code § 154-02.02(C) Mr. Hasan appeals the Hearing Officer’s denial of his variance request.

Argument

State law and City code require four conditions for a variance. See A.R.S. § 462.06 and Y.C.C. § 154-03.04(D). Specifically, Y.C.C. § 154-03.04(D)(1) states that the Hearing Officer:

. . . shall grant a variance(s) *only when* findings of fact are made that *all of the following conditions exist*:

- (a) There is a special circumstance(s) or condition(s) that applies to the property, building, or use referred to in the application, that does not apply to most other properties in the district.
- (b) The special circumstance was not created or caused by the property owner or applicant.
- (c) The granting of the variance is necessary for the preservation of substantial property rights enjoyed by other property owners in the vicinity, under identical zoning designations.
- (d) The granting of the variance will not be materially detrimental to any person residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public health, safety, and general welfare.

Each of the four (4) criteria required for the approval of a variance application must be answered in the affirmative. The inability to answer any one of the four (4) criteria in the affirmative, as a matter of law, must result in the denial of the variance application.

In this case, Mr. Hasan has failed to meet all four required conditions.

I. The question at Section 154-03.04 (D)(a) cannot be answered in the affirmative.

As depicted in the recorded Vista Del Sol Unit No. 1 plat and the aerial photo below, there is no special circumstance or condition that applies to this Property which does not apply to most other properties in the district. The dimensions of this property are 98 feet by 65 feet (6,370 square feet), which has the same size, topography, and shape as most other properties within the Vista Del Sol Unit 1 Subdivision.

The image shows a grid of property lots with dimensions. The grid is bounded by 33rd PLACE on the top and 33rd LANE on the bottom. The lots are numbered 72 through 63 in the top row, 45 through 54 in the second row, and 42 through 33 in the bottom row. A red box highlights lot 49, which is labeled 'Subject Property'. The dimensions of the lots are 98 feet by 65 feet. The grid is bounded by 1158.29' 89°53'37" W on the bottom.

33rd PLACE										
72	71	70	69	68	67	66	65	64	63	
45	48	47	48	49	50	51	52	53	54	
33rd LANE										
42	41	40	39	38	37	36	35	34	33	



II. The question at Section 154-03.04(D)(b) “Special Circumstance” cannot be answered in the affirmative.

There is no special circumstance that applies to this property. In addition, the applicant did not demonstrate a special circumstance.

III. The question at Section 154-03.04(D)(c) cannot be answered in the affirmative.

The property owners within the Vista Del Sol Unit No. 1 are required to comply with the development standards of the Recreation Vehicle Subdivision (RVS) District, including fence height requirements. Mr. Hasan argued that the new wall addition would protect the electric pedestal on his Property. However, properties within the neighborhood have similar electric pedestals and are similar in size as the subject Property.

IV. The question at Section 154-03.04(D)(d) cannot be answered in the affirmative.

As depicted in the photographs below, the granting of the variance will be materially detrimental to any person residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public health, safety, and general welfare. The newly constructed 7-foot-tall wall could impede visibility and significantly alter the character of the neighborhood.





Conclusion

The strict requirements for the approval of a variance application required by State law and Yuma City Code § 154-03.04(D) cannot be satisfied by the applicant. The applicant has not demonstrated a special circumstance that applies to the Property. Therefore, Mr. Hasan is not eligible for a variance under State law or City code. As such, the variance application for the Property cannot be approved and must be denied.