

# PLANNING COMMISSION AGENDA

CHAIRPERSON:

Brett Taylor



VICE CHAIRPERSON:

Liz Wynn

COMMISSIONERS: Brett Taylor, Liz Wynn, Chris Gomez, Marvin Hansen, Sarrah Peariso

**MONDAY, OCTOBER 8, 2018; 7:00 P.M., COUNCIL CHAMBERS, 707 W. ACEQUIA, VISALIA CA**

1. THE PLEDGE OF ALLEGIANCE –
2. CITIZEN'S COMMENTS – This is the time for citizens to comment on subject matters that are not on the agenda but are within the jurisdiction of the Visalia Planning Commission. The Commission requests that a 5-minute time limit be observed for comments. Please begin your comments by stating and spelling your name and city. Please note that issues raised under Citizen's Comments are informational only and the Commission will not take action at this time.
3. CHANGES OR COMMENTS TO THE AGENDA–
4. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.
  - No items on Consent Calendar
5. PUBLIC HEARING – Brandon Smith  
Continued Public Hearing: Variance No. 2018-10: A request by Brian Icenhower and Robyn Graham-Icenhower to allow a variance to the maximum fence height limit in the required front yard setback in order to install a seven-foot tall open wrought-iron fence and hedge in the R-1-5 (single-family residential, 5,000 sq. ft. minimum site area) zone. The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).
6. PUBLIC HEARING – Brandon Smith  
River Island Ranch Tentative Subdivision Map No. 5569: A request by 4Creeks, Inc. to subdivide parcels totaling 55.99 acres into a 239-lot single-family residential subdivision and seven lettered lots for landscaping and lighting district purposes, located within the R-1-5 (Single-Family Residential, minimum 5,000 square foot lot size) zone. The project site is located on the east side of N. Dinuba Boulevard, approximately 600 feet north of E. Shannon Parkway and south of the St. John's River (APN: 079-071-001, 016; 079-080-045, 049, 052, 053, 055).
7. DIRECTOR'S REPORT/ PLANNING COMMISSION DISCUSSION-
  - Planning Commission October 22, 2018 meeting
  - 5-Pack Work Session to City Council October 15, 2018

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For Hearing Impaired – Call (559) 713-4900 (TTY) 48-hours in advance of the scheduled meeting time to request signing services.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Office, 315 E. Acequia Visalia, CA 93291, during normal business hours.

### **APPEAL PROCEDURE**

**THE LAST DAY TO FILE AN APPEAL IS THURSDAY, OCTOBER 18, 2018 BEFORE 5 PM**

According to the City of Visalia Zoning Ordinance Section 17.02.145 and Subdivision Ordinance Section 16.04.040, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe, Visalia, CA 93292. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website [www.visalia.city](http://www.visalia.city) or from the City Clerk.

**THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, OCTOBER 22, 2018**

# City of Visalia

## Memo



**To:** Visalia Planning Commission

**From:** Brandon Smith, Senior Planner. Phone: (559) 713-4636  
E-mail: [brandon.smith@visalia.city](mailto:brandon.smith@visalia.city)

**Date:** October 8, 2018

**Re:** **Continued Public Hearing:** Variance No. 2018-10: A request by Brian Icenhower and Robyn Graham-Icenhower to allow a variance to the maximum fence height limit in the required front yard setback in order to install a seven-foot tall open wrought-iron fence and hedge in the R-1-5 (single-family residential, 5,000 sq. ft. minimum site area) zone. The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).

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### Staff Recommendation

Staff recommends that the Planning Commission deny Variance No. 2018-10 based upon the findings in Resolution No. 2018-39A. Staff's recommendation is based on the request not being able to satisfactorily meet the five required variance findings, as described in the attached Planning Commission staff report dated September 10, 2018.

### Background

On September 10, 2018, the Planning Commission, after holding a public hearing, continued Variance No. 2018-10 to the October 8, 2018 meeting. The motion to continue the item was approved 4-0 with Commissioner Wynn being absent. The motion to continue was prompted by the Commission after both a motion for approval and a motion for denial were made, both of which were withdrawn and not voted on. Since the item was continued to a date specific, re-noticing of the Variance was not required.

The applicant has provided additional materials to provide better clarification of the existing improvements on site. Specifically, the applicant has provided an updated site plan and elevations (Exhibits 1 and 2) that shows the existing street gutter and existing landscaping in front of the property line relative to the proposed fence location. The applicant has also provided three pictures (Exhibit 3) that show the residence upon acquisition by the property owner and after renovations were completed by the property owner. No other changes to the Variance request have been made.

A copy of the September 10, 2018 staff report for Variance No. 2018-10 is attached to this memorandum. The analysis and findings have not been modified, with the exception of the project's resolution to reflect the continued public hearing date.

### Attachments:

- Revised Resolution No. 2018-39A
- Exhibit 1 – Revised Site Plan
- Exhibit 2 – Revised elevations
- Exhibit 3 – Pictures of subject site's existing single-family residence
- Planning Commission Staff Report dated September 10, 2018

RESOLUTION NO. 2018-39A

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF VISALIA DENYING VARIANCE NO. 2018-10: A REQUEST BY BRIAN ICENHOWER AND ROBYN GRAHAM-ICENHOWER TO ALLOW A VARIANCE TO THE MAXIMUM FENCE HEIGHT LIMIT IN THE REQUIRED FRONT YARD SETBACK IN ORDER TO INSTALL A SEVEN-FOOT TALL OPEN WROUGHT-IRON FENCE AND HEDGE IN THE R-1-5 (SINGLE-FAMILY RESIDENTIAL, 5,000 SQ. FT. MINIMUM SITE AREA) ZONE. THE SITE IS LOCATED AT 2821 W. BORDER LINKS DRIVE. (APN: 089-124-012).

**WHEREAS**, Variance No. 2018-10 is a request by Brian Icenhower and Robyn Graham-Icenhower to allow a variance to the maximum fence height limit in the required front yard setback in order to install a seven-foot tall open wrought-iron fence and hedge in the R-1-5 (single-family residential, 5,000 sq. ft. minimum site area) zone. The site is located at 2821 W. Border Links Drive (APN: 089-124-012); and

**WHEREAS**, the Planning Commission of the City of Visalia, after published notice scheduled a public hearing before said commission on September 10, 2018; and

**WHEREAS**, the Planning Commission of the City of Visalia, at the September 10, 2018, held a public hearing, and continued the item to a date certain on October 8, 2018; and

**WHEREAS**, the Planning Commission of the City of Visalia does not find Variance No. 2018-09 to be in accordance with Chapter 17.42 of the Zoning Ordinance of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing; and

**WHEREAS**, the Planning Commission of the City of Visalia finds the project to be Categorically Exempt consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

**WHEREAS**, if Variance No. 2018-10 is denied, no action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Planning Commission of the City of Visalia makes the following specific finding based on the evidence presented:

1. *That strict or literal interpretation and enforcement of the specified regulation would not result in practical difficulty or unnecessary hardship inconsistent with the objectives of the zoning ordinance.*

The purpose of the City's ordinance on fences, according to Municipal Code Section 17.36.010, is to "control the location and height of fences as may be required by city

laws, rules and regulations to safeguard life or limb, property, and public welfare". The regulations permit properties to install up to a seven foot tall fence except in a required front yard or in some cases a street side yard.

Staff's finding is that there is no practical difficulty or unnecessary hardship associated with this site in comparison to other similar zoned or situated sites in Visalia. The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

2. *That there are not exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zone.*

Staff's finding is that there is no exceptional or extraordinary circumstances or conditions associated with this site in comparison to other similar zoned or situated sites in Visalia. The subject property is 16,074 square feet in area. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

3. *That strict or literal interpretation and enforcement of the specified regulation would not deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.*

The strict and literal interpretation of the Zoning Ordinance does prohibit the property owner from obtaining a permit to erect a fence at the required specified height at front property line or within the required front yard. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line,

which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site.

4. *That the granting of the variance will constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;*

The granting of a variance would constitute a special privilege because other properties have received fences through the approval of an Exception application, which is no longer an available entitlement through the City. Such fences were granted based on demonstrating that an obstruction to visibility was not created and the feature became an integral part of the existing site development. The unintended result of the City's Exception process was that a large number of properties have received approval for fences above the height limit that could not be justified through a Variance, compromising the objective and consistency of the City's fence ordinance.

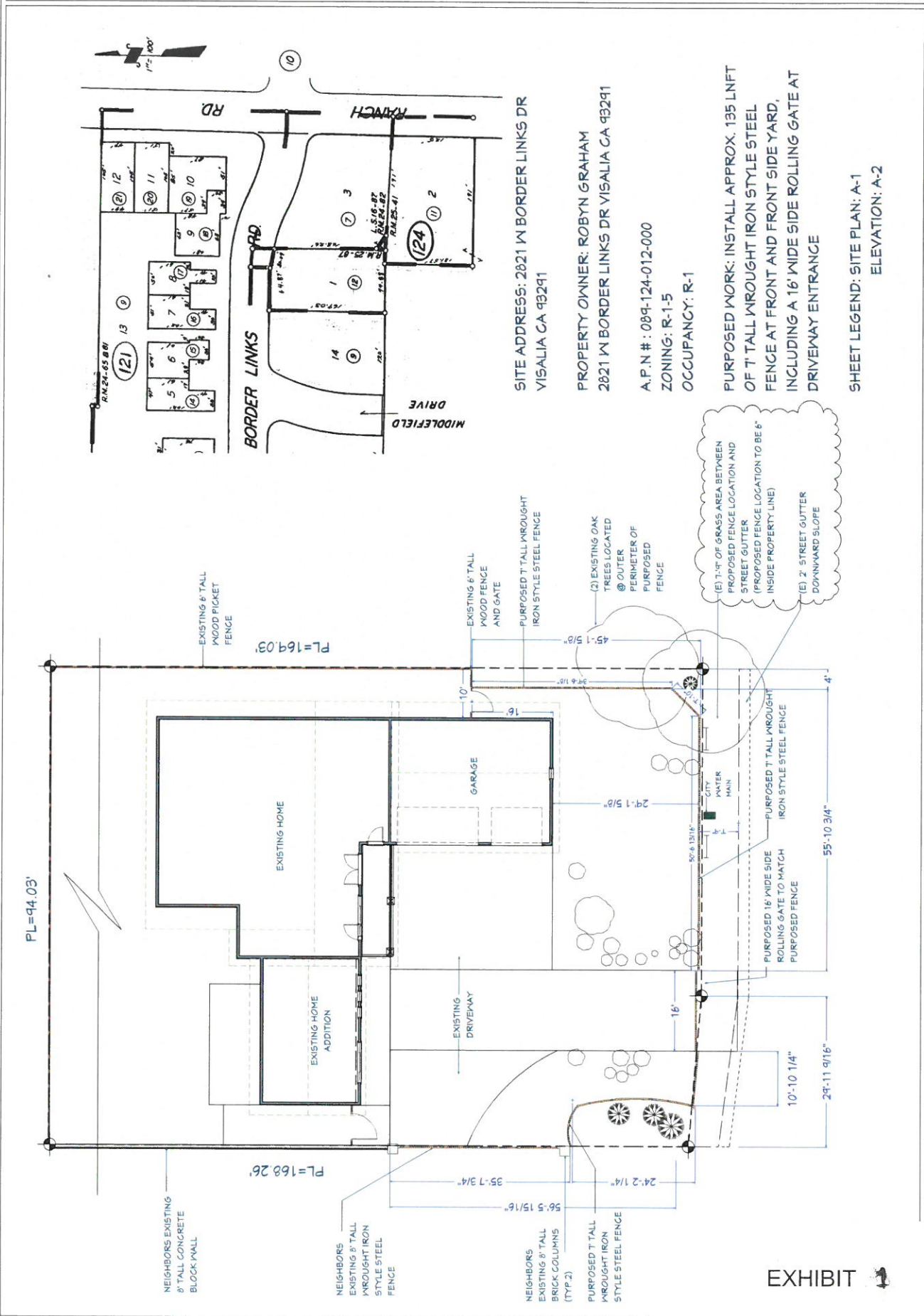
Similarly, if a Variance were approved for the subject property, it would set precedence for other properties classified in the same zone and in the same neighborhood to approve fence requests above the height limit especially if it can be demonstrated that the site can accommodate a 7-foot fence meeting the required 15-ft. front yard setback requirement.

5. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

Concur with applicant. The granting of a variance to height limit would not be considered detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby denies Variance No. 2018-10 on the real property herein above described in accordance with the terms of this resolution under the provision of Section 17.42.090 of the Ordinance Code of the City of Visalia.

REVISION TABLE	PROPERTY OWNER BRIAN ICHENHOVER & ROBYN GRAHAM SITE ADDRESS: 2821 W BORDER LINKS DR	DRAWINGS PROVIDED BY: CAMEL GUTTERZ FCN GENERAL CONTRACTING INC LIC#083105 PCHCONSTRUCTION@YAHOO.COM 5991786-9295	DATE: 9/24/2018	SCALE: 1/8" = 1'	SHEET: A-1
NUMBER DATE REVISION BY DESCRIPTION					



SITE ADDRESS: 2821 W BORDER LINKS DR  
VISALIA CA 93291

PROPERTY OWNER: ROBYN GRAHAM  
2821 W BORDER LINKS DR VISALIA CA 93291

A.P.N # : 089-124-012-000  
ZONING: R-1-5  
OCCUPANCY: R-1

PURPOSED WORK: INSTALL APPROX. 135 LNFT  
OF 7' TALL WROUGHT IRON STYLE STEEL  
FENCE AT FRONT AND FRONT SIDE YARD,  
INCLUDING A 16' WIDE SIDE ROLLING GATE AT  
DRIVEWAY ENTRANCE

SHEET LEGEND: SITE PLAN: A-1  
ELEVATION: A-2

(1) 7'-0" OF GRASS AREA BETWEEN  
PROPOSED FENCE LOCATION AND  
STREET GUTTER  
(PROPOSED FENCE LOCATION TO BE 6'  
INSIDE PROPERTY LINE)

(2) 2' STREET GUTTER  
DOWNWARD SLOPE

REVISION TABLE	REVISION BY	DESCRIPTION	DATE

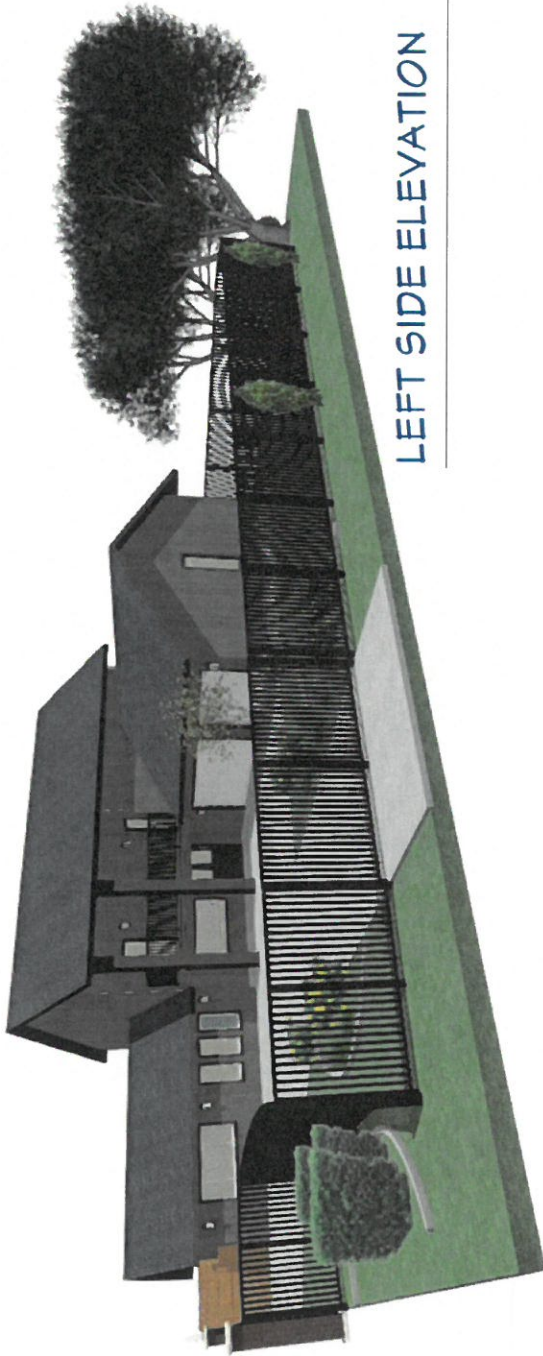
PROPERTY OWNER:  
 BRIAN ICEHOWER & ROBYN GRAHAM  
 SITE ADDRESS: 2021 W BORDERLINKS DR

DRAWINGS PROVIDED BY:  
 CAMILA GUTIERREZ  
 PCN GENERAL CONTRACTING INC  
 LIC#95105  
 PCNCONSTRUCTION@YAHOO.COM  
 (959) 766-9299

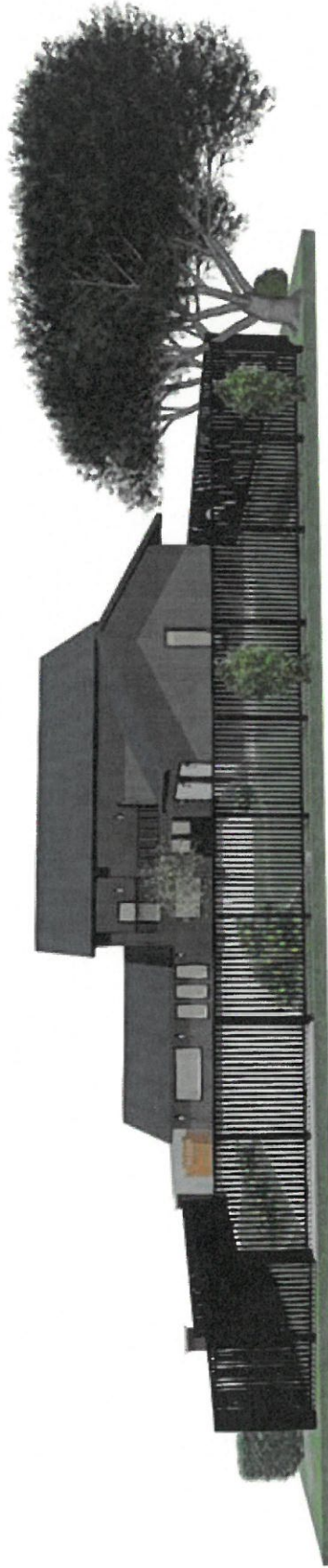
DATE:  
 9/24/2018

SCALE:  
 1/8" = 1'

SHEET:  
 A-2



LEFT SIDE ELEVATION



FRONT YARD ELEVATION





EXHIBIT 3





**TCMLS®**



## REPORT TO CITY OF VISALIA PLANNING COMMISSION

**HEARING DATE:** September 10, 2018

**PROJECT PLANNER:** Brandon Smith, Senior Planner  
Phone:(559) 713-4636,  
E-mail: [brandon.smith@visalia.city](mailto:brandon.smith@visalia.city)

**SUBJECT: Variance No. 2018-10:** A request by Brian Icenhower and Robyn Graham-Icenhower to allow a variance to the maximum fence height limit in the required front yard setback in order to install a seven-foot tall open wrought-iron fence and hedge in the R-1-5 (single-family residential, 5,000 sq. ft. minimum site area) zone. The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).

### STAFF RECOMMENDATION

Staff recommends that the Planning Commission deny Variance No. 2018-10 based upon the findings in Resolution No. 2018-39. Staff's recommendation is based on the request not being able to satisfactorily meet the five required variance findings.

### RECOMMENDED MOTION

I move to deny Variance No. 2018-10, based on the findings and conditions in Resolution No. 2018-39.

### PROJECT DESCRIPTION

The proposed request is a variance to the maximum fence height allowed within an R-1-5 zoned parcel's required 15-foot front yard setback, as illustrated in Exhibit "A". The property owner is requesting to install a seven foot tall wrought iron style fence along the front property line of the single-family residence located at 2821 W. Border Links Drive. The wrought iron fence includes a 16-foot wide rolling gate across the driveway as shown in the elevation drawing in Exhibit "B".

The proposed fence and rolling gate will be installed along the front property line, which is located approximately 10-feet from the face of curb. The wrought iron fence will span most of the property's street frontage. The fence will also wrap around both sides of the front yard and will connect to the existing fence improvements on the subject site and the neighboring property to the east as shown in Exhibit "B". The applicant has also indicated that hedging will be planted in areas along the fence as shown in Exhibit "B".

In the R-1-5 zone, fences, walls and hedges not exceeding seven feet in height are permitted, except in a required front yard, which in the R-1-5 zone is 15 feet. In the required front yard, a wrought iron fence or any fence that is at least 50% open (i.e. chain link, picket) shall not exceed four feet in height. A solid fence, wall, or hedge shall not exceed three feet in height.

The applicant has prepared responses to the five required variance findings to support their request. The applicant's responses to the variance findings are included as Exhibit "C". The applicant's findings explain that other fences with heights above the four-foot limit exist around their neighborhood. Staff has not been able to verify if a permit was issued for a number of these fences. The applicant contends that a recent increase in criminal activity and the

additional need for security has caused the City's four foot height limit to be an unnecessary hardship upon residences.

**BACKGROUND INFORMATION**

General Plan Land Use Designation	Low Density Residential
Zoning	R-1-5 Single Family Residential, 5,000 square foot minimum lot size
Surrounding Zoning and Land Use	North: R-1-5 – Border Links Drive, semi-detached residential South: R-1-5 – Single family residential East: R-1-5 – Single family residential West: R-1-5 – Single family residential
Environmental Review	Categorical Exemption No. 2018-50
Special District	None
Site Plan Review	N/A

**RELATED PLANS & POLICIES**

Please see attached summary of related plans and policies pertaining to the Single Family Residential Zone and to Variances.

**RELATED PROJECTS**

The Planning Commission has previously approved Variances and Exceptions in surrounding single-family residential zoned properties to allow fences in the required front yard setback that are above the maximum height limit. Many of these fences are located in the Green Acres neighborhood, located east of the subject site, on properties that were originally developed under County jurisdiction. These entitlements are explained further in the Project Evaluation section.

**PROJECT EVALUATION**

The staff recommendation is to deny the applicant's request for a variance to the maximum fence height in the required front yard setback. The basis for staff's recommendation, supported by staff's analysis of the required variance findings, is that there is a considerable distance between property line and the closest structure (29 feet) where the property owner can construct a seven-foot tall fence and meet the required 15 foot front yard setback from property line. The fence, if located at least 15 feet from property line, would meet the fence height requirements and would address the property owners concerns of security.

The placement of a fence above height limit at property line also presents concerns of maintaining the aesthetic character and public welfare of the neighborhood, which cannot be supported by the variance findings. Other properties in the neighborhoods to the south and east have erected similar fences adjacent to street frontages; however such fences that were allowed by the City were done through the approval of an Exception entitlement which was eliminated in the 2017 Zoning Ordinance Update.

## Required Variance Findings

The Planning Commission is required to make five findings before a variance can be granted. The applicant has provided response to the variance findings (included in Exhibit "C") and staff has included the analysis for each finding below. The applicant has also responded to criteria that could formerly be considered for an Exception in Exhibit "C"; however staff is unable to utilize those responses since Exceptions are not offered through the City.

1. *That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the zoning ordinance;*

### Applicant's Findings:

Since the neighborhood surrounding the subject property is located immediately South of the Visalia Country Club golf course, both criminals and vagrants are free to travel on foot and bicycle across the golf course at night without fear of being noticed by police patrols. As a result, there has been an abnormally high level of criminal activity in the subject neighborhood. Attached as Exhibit #1 showing a LexisNexis Community Crime Map illustrating all reported criminal activity in the subject neighborhood over the period of the last year from August 2017 to August 2018.

This increase in criminal activity is further evidenced in Exhibit #2 showing 6 "Next Door" application screenshots of posts and comments submitted by the residents of the subject neighborhood about suspicious and criminally-related activities within the past 12 months. Further, Exhibit #3 shows a "Next Door" application screenshot posted by applicants of a video of a delivery package being stolen from the front door step of the subject property on May 9, 2018.

It is for these reasons that many of the residents in the subject neighborhood have chosen, and have been permitted to, construct fences well over the 4' maximum height requirement stated in Visalia City Municipal Code §17.36.030. The initial purpose of this zoning regulation was to enhance aesthetic appeal by opening up the visibility of the homes to the street-view with shorter 4' fences. However, the fact that such a large majority of the homes in the subject neighborhood have been granted variance/exceptions to this 4' tall limitation evidences the fact that a strict interpretation of the regulation does in fact result in unnecessary hardship inconsistent with the purposes of the zoning. In this case, the unnecessary hardship is clearly a lack of adequate security for the residents of the neighborhood. To limit the level of security in exchange for the questionable aesthetic appeal of shorter fences has clearly been determined as inconsistent with the purposes of the zoning by previous Visalia City Staff and Planning Commission decisions.

### Staff Analysis:

The purpose of the City's ordinance on fences, according to Municipal Code Section 17.36.010, is to "control the location and height of fences as may be required by city laws, rules and regulations to safeguard life or limb, property, and public welfare". The regulations permit properties to install up to a seven foot tall fence except in a required front yard or in some cases a street side yard.

Staff's finding is that there is no practical difficulty or unnecessary hardship associated with this site in comparison to other similar zoned or situated sites in Visalia. The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's

objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zone;*

Applicant's Findings:

The subject neighborhood, known commonly as either Green Acres, Hyde Park, or the Visalia Country Club area, has one of the highest average property values in the City of Visalia. Visalia's average home price is approximately \$249,000, and the average home price of the subject neighborhood is approximately \$600,000. The majority of these homes are very large in size and are located on large lots. These high-valued homes make them an especially attractive target for crime.

Other neighborhoods with similarly high average property values within the city limits are typically located within gated communities, and therefore benefit from the protection afforded by a contained community that does not permit criminals and vagrants from easily accessing the homes.

Furthermore, the relatively large lots make higher front fences with gates more appropriate and appealing from an aesthetic point of view. It may not be aesthetically appealing for a home situated on a 7,500 square foot lot to have a 6' to 8' tall fence in front of it. However, a large number of the homes located in the subject neighborhood with 15,000 to 20,000 square foot lots have wrought-iron style fences that permit more than 75% visibility through the fences. This can allow views of large and well landscaped yards through from the street. The subject property is situated on a 16,150 square foot lot and is currently undergoing major landscaping renovations to restore the property up to the standards currently exhibited by the neighborhood.

Consequently, it is the applicants' contention that the high property values and the larger homes/lots in the subject neighborhood created the requisite "exceptional conditions" to justify the City of Visalia Staff and Planning Commission's granting of so many variance/exception permits for fence height in the neighborhood in recent years. Further, applicants maintain that the same finding and determination should be applied to their home as well.

Staff Analysis:

Staff's finding is that there is no exceptional or extraordinary circumstances or conditions associated with this site in comparison to other similar zoned or situated sites in Visalia. The subject property is 16,074 square feet in area. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

3. *That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone;*

Applicant's Findings:

As previously stated, a large number of the homes in the subject neighborhood have been granted variance/exception permits in recent years. Despite the fact that Visalia City Municipal Code §17.36.030 requires a 4' maximum fence height, many homes have been permitted to build 6' to 8' tall fences. Applicants have attached exhibits #4 - #12 to show photos and front yard fence heights of 9 homes located in the subject neighborhood. All of the homes shown in these photos have front yard fences with gates that are 6' to 8' tall. There are also many additional homes from the neighborhood that could have been submitted as exhibits as well.

Therefore, it is clear that the strict or literal interpretation and enforcement of the 4' fence height limitation in Visalia City Municipal Code §17.36.030 would clearly deprive the applicants of the privileges enjoyed by owners of the other properties located in the very same neighborhood.

Staff Analysis:

The strict and literal interpretation of the Zoning Ordinance does prohibit the property owner from obtaining a permit to erect a fence at the required specified height along the front property line or within the required front yard area. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site.

4. *That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;*

Applicant's Findings:

Again, exhibits #4 - #12 show photos and front yard fence heights of 9 homes located in the subject neighborhood with front yard fences with gates that are 6' to 8' tall. In fact, exhibit #4 contains two photos of the fence around the front of the adjacent property located at 2803 W. Border Links Drive. This home, located immediately next door to the applicants' home, has 8'6" tall brick columns supporting a 7'9" wrought iron style fence around the front yard of their home.

Based upon these examples of past precedent in the subject neighborhood, it is clear that the granting of this variance/exception to the 4' fence height limitation in Visalia City Municipal Code §17.36.030 would not constitute a grant of special privilege inconsistent limitations previously imposed on other properties.



Staff Analysis:

The granting of a variance would constitute a special privilege because other properties have received fences through the approval of an Exception application, which is no longer an available entitlement through the City. Such fences were granted based on demonstrating that an obstruction to visibility was not created and the feature became an integral part of the existing site development. The unintended result of the City's Exception process was that a large number of properties have received approval for fences above the height limit that could not be justified through a Variance, compromising the objective and consistency of the City's fence ordinance.

Similarly, if a Variance were approved for the subject property, it would set precedence for other properties classified in the same zone and in the same neighborhood to approve fence requests above the height limit especially if it can be demonstrated that the site can accommodate a 7-foot fence meeting the required 15-ft. front yard setback requirement.

5. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

Applicant's Findings:

The subject property is not located on a corner-lot. The property is instead sandwiched in between two other homes on its East and West sides. Accordingly, the construction of a 7' tall wrought-iron style fence w/ rolling gate will not in any way obstruct visibility that might interfere with traffic safety in the public right-of-way or to adjacent properties. In fact, the home pictured in the two photos in exhibit #4 is located immediately next door to the applicants' home and has 8'6" tall brick columns supporting a 7'9" wrought iron style fence around the front yard of their home. As a result, there can be no way that the granting of the variance/exception could be deemed detrimental to the public health, safety or welfare, or material injurious to properties or improvements in the vicinity.

Staff Analysis:

Concur with applicant. The granting of a variance to height limit would not be considered detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

**Front Yard Setback**

Section 17.36.030 of the Zoning Ordinance states that fences, walls and hedges not exceeding seven feet in height shall be permitted, except in a required front yard setback or within five feet of a street side property line. A solid fence not exceeding three feet, or a four foot "open fence" (i.e., chain link or wrought iron) shall be permitted within the required front yard setback area.

Border Links Drive has an existing right-of-way width of 60-feet, which includes approximately 40 feet of paving as well as curbs, and gutters on both sides of the street. The front property line is



located approximately 10-feet from the face of curb (see aerial insert). Fences are not permitted out-side of property lines. The proposed fence is located on or behind property line, as shown in Exhibit "A".

### **Former Exception Entitlement Process**

The 2017 Zoning Ordinance Update eliminated the Exception Section from the Zoning Ordinance. The primary reason to eliminate the Exception process was due to the inconsistencies the Exception process created related to applicant's seeking deviations from property development standards, and in particular, fence height restrictions in required yard areas. The Zoning Ordinance now requires a Variance for any applicant seeking a deviation to a property development standard.

The Exception entitlement process was similar to a Variance entitlement in that it allowed the Planning Commission to grant an exception to specific regulations, including fences, if three criteria were applicable. The criteria did not require the finding of a practical difficulty or unnecessary hardship, which are required for a Variance, but instead allowed the granting of an exception if an obstruction to visibility was not created and the feature became an integral part of the existing site development.

This process made it impossible to deny a deviation request to fence heights in required front yard setback areas. This is important to note because some fences in the surrounding neighborhood, including the wrought iron fence at 2803 W. Border Links Drive, immediately east of the subject site, were approved on the basis of meeting the Exception criteria.

However, the five variance findings, when applied to deviations for fence height request in required front yard areas, are difficult to support if it can be demonstrated that the property can accommodate relocation of the fence to meet the height requirements as prescribed by the Zoning Ordinance. These same findings are the basis for staff's recommendation of denial for this variance request.

### **Variances & Exceptions for Front Yard Fences on Nearby Properties**

Subdivisions located west of Ranch Street, including Green Acres West (where the subject property is located), Green Acres South, and Hyde Park, were recorded and subdivided in the City limits. These properties are generally zoned R-1-5, and most conform to the City's zoning regulations. Some Exceptions have been approved that include the following:

- **Exception No. 2008-03** was approved by the Planning Commission on March 24, 2008, allowing an encroachment into the front 15-foot setback resulting in a fence 2-feet behind property line for property located at 2801 W. Keogh Street. This property does not contain a residence but encompasses an extension of the rear yard for the neighboring property to the east that faces onto Ranch Street.
- **Exception No. 9511** was approved on July 24, 1995, for the neighboring property located at 2803 W. Border Links Drive. The approval was a modified version of the applicant's request, resulting in a fence comprised of wrought iron, brick pilasters, and an entry gate, none of it exceeding seven feet in height. The applicant's original request was for a 6-ft., 6-in. fence with 8-ft. pilasters and a 9-ft., 6-in. entry gate.

The Green Acres neighborhood, located east of Ranch Street, was largely developed in the County and later annexed to the City. Throughout this area there are buildings and fences that encroach into the required setbacks due to the difference in zoning regulations between the County and City. These properties are generally zoned R-1-20.

There have been a number of Variance and Exception requests approved in the Green Acres area, including the following:

- **Exception No 2014-07** was approved by the Planning Commission on January 12, 2005 to allow a six-foot high wrought iron fence in the front and street side setback in the R-1-20 residential zone. The site is located at 2630 W. Green Acres Drive.
- **Variance No. 2011-06** was approved by the Planning Commission on September 12, 2011 to allow a six-foot high wrought iron fence along the front and street side property lines, and five-foot high wrought iron fence approximately 5 feet from the bank of Mill Creek. This site is located at 2101 W. Green Acres Drive.
- **Variance No. 9213** was considered by the Planning Commission in 1992 to allow a block wall in the front setback on the R-1-20 zone. This property is located at 2730 W. Crescent Avenue.

### **Fences Shown in Exhibits D and E**

The applicant has provided Exhibit "D" that illustrate nine different properties with fences or walls along or near street frontages that exceed the four-foot height limit. Staff has prepared a map exhibit (refer to Exhibit "E") that keys the locations of these properties, most of which are located in the Green Acres neighborhood.

Since the Green Acres neighborhood was largely developed in the County, it is possible that these fences were developed in the County and later annexed into the City as pre-existing nonconforming structures. Similarly, it is possible that one or more fences were erected without permits. Staff verified that two of these properties (#4 at 2803 W. Border Links and #8 at 2630 W. Green Acres) received a Variance or Exception by the City as described above. Staff also believes that the fence in Exhibit #12 (1820 W. Club Drive) legally conforms to setback requirements since it is located along the street side, not front, property line.

### **Environmental Review**

The project is considered Categorical Exempt under Section 15305 of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA). (Categorical Exemption No. 2018-50).

## **RECOMMENDED FINDINGS**

1. That strict or literal interpretation and enforcement of the specified regulation would not result in practical difficulty or unnecessary hardship inconsistent with the objectives of the zoning ordinance.

The purpose of the City's ordinance on fences, according to Municipal Code Section 17.36.010, is to "control the location and height of fences as may be required by city laws, rules and regulations to safeguard life or limb, property, and public welfare". The regulations permit properties to install up to a seven foot tall fence except in a required front yard or in some cases a street side yard.

Staff's finding is that there is no practical difficulty or unnecessary hardship associated with this site in comparison to other similar zoned or situated sites in Visalia. The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site. The distance between property line and the closest structure (29

feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

2. That there are not exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zone.

Staff's finding is that there is no exceptional or extraordinary circumstances or conditions associated with this site in comparison to other similar zoned or situated sites in Visalia. The subject property is 16,074 square feet in area. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

3. That strict or literal interpretation and enforcement of the specified regulation would not deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.

The strict and literal interpretation of the Zoning Ordinance does prohibit the property owner from obtaining a permit to erect a fence at the required specified height at front property line or within the required front yard. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site.

4. That the granting of the variance will constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;

The granting of a variance would constitute a special privilege because other properties have received fences through the approval of an Exception application, which is no longer an available entitlement through the City. Such fences were granted based on demonstrating that an obstruction to visibility was not created and the feature became an integral part of the existing site development. The unintended result of the City's Exception process was that a large number of properties have received approval for fences above the height limit that could not be justified through a Variance, compromising the objective and consistency of the City's fence ordinance.

Similarly, if a Variance were approved for the subject property, it would set precedence for other properties classified in the same zone and in the same neighborhood to approve fence requests above the height limit especially if it can be demonstrated that the site can accommodate a 7-foot fence meeting the required 15-ft. front yard setback requirement.

5. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

The granting of a variance to height limit would not be considered detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

6. That the project is considered Categorically Exempt under Section 15305 of the Guidelines for Implementation of CEQA (Categorical Exemption No. 2018-50).

## APPEAL INFORMATION

According to the City of Visalia Zoning Ordinance Section 17.02.145, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe Street, Visalia, CA 93292. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website [www.visalia.city](http://www.visalia.city) or from the City Clerk.

### Attachments:

- Related Plans and Policies
- Resolution No. 2018-39
- Exhibit "A" – Site Plan
- Exhibit "B" – Perspective Drawings
- Exhibit "C" – Variance/Exception Findings submitted by applicant
- Exhibit "D" – Exhibits & Pictures of other existing fences submitted by applicant
- Exhibit "E" – Map identifying other fences submitted by applicant
- General Plan Land Use Map
- Zoning Map
- Aerial Map
- Location Sketch

## RELATED PLANS AND POLICIES

### Zoning Ordinance

#### Chapter 17.12

#### SINGLE-FAMILY RESIDENTIAL ZONE

R-1-5 Zone, Minimum Site Area 5,000 square feet

Maximum Building Height: 35 Feet

<u>Minimum Setbacks:</u>	<u>Building</u>
➤ Front	15 Feet
➤ Front Garage (garage w/door to street)	22 Feet
➤ Side	5 Feet
➤ Street side on corner lot	10 Feet
➤ Rear	25 Feet

Minimum Site Area: 20,000 square feet

Accessory Structures:

Maximum Height: 12 feet (as measured from average grade next to the structure)

Maximum Coverage: 20% of required Rear Yard (last 25 feet by the width)

#### Chapter 17.42

#### VARIANCES AND EXCEPTIONS

##### **17.42.010 Variance purposes.**

The city planning commission may grant variances in order to prevent unnecessary hardships that would result from a strict or literal interpretation and enforcement of certain regulations prescribed by this title. A practical difficulty or unnecessary hardship may result from the size, shape or dimensions of a site or the location of existing structures thereon, from geographic, topographic or other physical conditions on the site or in the immediate vicinity, or from population densities, street locations or traffic conditions in the immediate vicinity. The power to grant variances does not extend to use regulations, because the flexibility necessary to avoid results inconsistent with the objectives of the zoning ordinance is provided by the conditional use provisions of this title.

##### **17.42.020 [Reserved]**

##### **17.42.030 Variance powers of city planning commission.**

The city planning commission may grant variances to the regulations prescribed by this title with respect to fences and walls, site area, width, frontage coverage, front yard, rear yard, side yards, height of structures, distance between structures, off-street parking facilities, accessory dwelling unit standards pursuant to Sections 17.12.140 through 17.12.200, and downtown building design criteria pursuant to Section 17.58.082 through 17.58.088; in accordance with the procedures prescribed in this chapter.

##### **17.42.040 [Reserved]**

##### **17.42.050 Application procedures.**

A. Application for a variance or exception shall be made to the city planning commission on a form prescribed by the commission and shall include the following data:

1. Name and address of the applicant;

2. Statement that the applicant is the owner of the property, is the authorized agent of the owners, or is or will be the plaintiff in an action in eminent domain to acquire the property involved;
  3. Address and legal description of the property;
  4. Statement of the precise nature of the variance or exception requested and the hardship or practical difficulty that would result from the strict interpretation and enforcement of this title;
  5. The application shall be accompanied by such sketches or drawings that may be necessary to clearly show applicant's proposal;
  6. Additional information as required by the historic preservation advisory board;
  7. When reviewing requests for an exception associated with a request for density bonus as provided in Chapter 17.32, Article 2, the applicant shall submit copies of the comprehensive development plan, sketches and plans indicating the nature of the request and written justification that the requested modifications result in identifiable cost reductions required for project to reach target affordability.
- B. The application shall be accompanied by a fee set by resolution of the city council sufficient to cover the cost of handling the application.

**17.42.060 Hearing and notice.**

- A. The city planning commission shall hold a public hearing on an application for a variance.
- B. Notice of a public hearing shall be given not less than ten days or more than thirty (30) days prior to the date of the hearing by mailing a notice of the time and place of the hearing to property owners within three hundred (300) feet of the boundaries of the area occupied or to be occupied by the use that is the subject of the hearing.

**17.42.070 Investigation and report.**

The city planning staff shall make an investigation of the application and shall prepare a report thereon that shall be submitted to the city planning commission.

**17.42.080 Public hearing procedure.**

At a public hearing the city planning commission shall review the application and the statements and drawings submitted therewith and shall receive pertinent evidence concerning the variance, particularly with respect to the findings prescribed in Section 17.42.090.

**17.42.090 Variance action of the city planning commission.**

- A. The city planning commission may grant a variance to a regulation prescribed by this title with respect to fences and walls, site area, width, frontage, coverage, front yard, rear yard, side yards, height of structures, distances between structures or landscaped areas or in modified form if, on the basis of the application, the report of the city planning staff or the evidence submitted, the commission makes the following findings:
1. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the zoning ordinance;
  2. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zone;
  3. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone;
  4. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;
  5. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

B. The city planning commission may grant a variance to a regulation prescribed by this title with respect to off-street parking facilities, if, on the basis of the application, the report of the city planner or the evidence submitted the commission makes the findings prescribed in subsection (A)(1) of this section and that the granting of the variance will not result in the parking of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets.

C. A variance may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe.

D. The city planning commission may deny a variance application.

**17.42.100 [Reserved]**

**17.42.110 Appeal to city council.**

The decision of the city planning commission on a variance or exception application shall be subject to the appeal provisions of Section 17.02.145.

**17.42.120 Lapse of variance.**

A variance shall lapse and become void one year following the date on which the variance became effective, unless prior to the expiration of one year, a building permit is issued by the building official and construction is commenced and diligently pursued toward completion on the site that was the subject of the variance application, or a certificate of occupancy is issued by the building official for the site or structure that was the subject of the variance application. A variance may be renewed for an additional period of one year; provided, that prior to the expiration of one year from the date when the variance became effective, an application for renewal of the variance is made to the commission. The commission may grant or deny an application for renewal of a variance.

**17.42.130 Revocation.**

A variance granted subject to a condition or conditions shall be revoked by the city planning commission if the condition or conditions are not complied with.

**17.42.140 New application.**

Following the denial of a variance application or the revocation of a variance, no application for the same or substantially the same variance on the same or substantially the same site shall be filed within one year of the date of denial of the variance application or revocation of the variance.



RESOLUTION NO. 2018-39

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF VISALIA DENYING VARIANCE NO. 2018-10: A REQUEST BY BRIAN ICENHOWER AND ROBYN GRAHAM-ICENHOWER TO ALLOW A VARIANCE TO THE MAXIMUM FENCE HEIGHT LIMIT IN THE REQUIRED FRONT YARD SETBACK IN ORDER TO INSTALL A SEVEN-FOOT TALL OPEN WROUGHT-IRON FENCE AND HEDGE IN THE R-1-5 (SINGLE-FAMILY RESIDENTIAL, 5,000 SQ. FT. MINIMUM SITE AREA) ZONE. THE SITE IS LOCATED AT 2821 W. BORDER LINKS DRIVE. (APN: 089-124-012).

**WHEREAS**, Variance No. 2018-10 is a request by Brian Icenhower and Robyn Graham-Icenhower to allow a variance to the maximum fence height limit in the required front yard setback in order to install a seven-foot tall open wrought-iron fence and hedge in the R-1-5 (single-family residential, 5,000 sq. ft. minimum site area) zone. The site is located at 2821 W. Border Links Drive (APN: 089-124-012); and

**WHEREAS**, the Planning Commission of the City of Visalia, after published notice scheduled a public hearing before said commission on September 10, 2018; and

**WHEREAS**, the Planning Commission of the City of Visalia does not find Variance No. 2018-09 to be in accordance with Chapter 17.42 of the Zoning Ordinance of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing; and

**WHEREAS**, the Planning Commission of the City of Visalia finds the project to be Categorically Exempt consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

**WHEREAS**, if Variance No. 2018-10 is denied, no action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Planning Commission of the City of Visalia makes the following specific finding based on the evidence presented:

1. *That strict or literal interpretation and enforcement of the specified regulation would not result in practical difficulty or unnecessary hardship inconsistent with the objectives of the zoning ordinance.*

The purpose of the City's ordinance on fences, according to Municipal Code Section 17.36.010, is to "control the location and height of fences as may be required by city laws, rules and regulations to safeguard life or limb, property, and public welfare". The regulations permit properties to install up to a seven foot tall fence except in a required front yard or in some cases a street side yard.

Staff's finding is that there is no practical difficulty or unnecessary hardship associated with this site in comparison to other similar zoned or situated sites in Visalia. The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

2. *That there are not exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zone.*

Staff's finding is that there is no exceptional or extraordinary circumstances or conditions associated with this site in comparison to other similar zoned or situated sites in Visalia. The subject property is 16,074 square feet in area. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

3. *That strict or literal interpretation and enforcement of the specified regulation would not deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.*

The strict and literal interpretation of the Zoning Ordinance does prohibit the property owner from obtaining a permit to erect a fence at the required specified height at front property line or within the required front yard. Like the properties that surround the site, it is larger than properties typically found in the R-1-5 zone. However, the larger lot size also provides greater ability and opportunity for an open fence taller than four feet to be placed, if desired, outside of the required front yard setback. The distance between property line and the closest structure (29 feet) permits the property owner to comply with the fence height requirements by allowing the owner to construct a seven-foot tall fence meeting the required 15 foot front yard setback from property line, which would address the property owners concerns of security.

The City's fence ordinance ensures that properties are able to erect fences for the purpose of protecting private property while maintaining a neighborhood's aesthetic character. The ordinance allows for fences up to four feet in height at property line, which meets the Ordinance's objectives of maintaining neighborhood character while discouraging unwarranted persons from entering the site.

4. *That the granting of the variance will constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;*

The granting of a variance would constitute a special privilege because other properties have received fences through the approval of an Exception application, which is no longer an available entitlement through the City. Such fences were granted based on demonstrating that an obstruction to visibility was not created and the feature became an integral part of the existing site development. The unintended result of the City's Exception process was that a large number of properties have received approval for fences above the height limit that could not be justified through a Variance, compromising the objective and consistency of the City's fence ordinance.

Similarly, if a Variance were approved for the subject property, it would set precedence for other properties classified in the same zone and in the same neighborhood to approve fence requests above the height limit especially if it can be demonstrated that the site can accommodate a 7-foot fence meeting the required 15-ft. front yard setback requirement.

5. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

Concur with applicant. The granting of a variance to height limit would not be considered detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

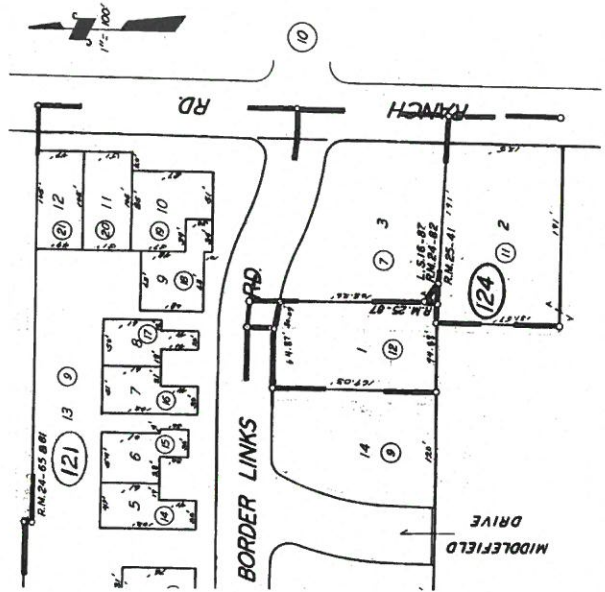
**BE IT FURTHER RESOLVED** that the Planning Commission hereby denies Variance No. 2018-10 on the real property herein above described in accordance with the terms of this resolution under the provision of Section 17.42.090 of the Ordinance Code of the City of Visalia.

REVISION TABLE	NUMBER	DATE	REVISION DESCRIPTION

PROPERTY OWNER:  
BRUN ICEHOWER & ROBYN GRAHAM  
SITE ADDRESS: 2821 W BORDER LINKS DR

DRAWINGS PROVIDED BY:  
CARLA GUTIERREZ  
FCN GENERAL CONTRACTING INC.  
LIC#813709  
P/CNSTRUCTION@YAHOO.COM  
(559) 766-7249

DATE: 8/14/2018  
SCALE: 1/8"=1'  
SHEET: A-1



SITE ADDRESS: 2821 W BORDER LINKS DR  
VISALIA CA 93291

PROPERTY OWNER: ROBYN GRAHAM  
2821 W BORDER LINKS DR VISALIA CA 93291

A.P.N #: 089-124-012-000  
ZONING: R-1-5  
OCCUPANCY: R-1

PURPOSED WORK: INSTALL APPROX. 195 LNFT OF T TALL WROUGHT IRON STYLE STEEL FENCE AT FRONT AND FRONT SIDE YARD, INCLUDING A 16' WIDE SIDE ROLLING GATE AT DRIVEWAY ENTRANCE

SHEET LEGEND: SITE PLAN: A-1  
ELEVATION: A-2

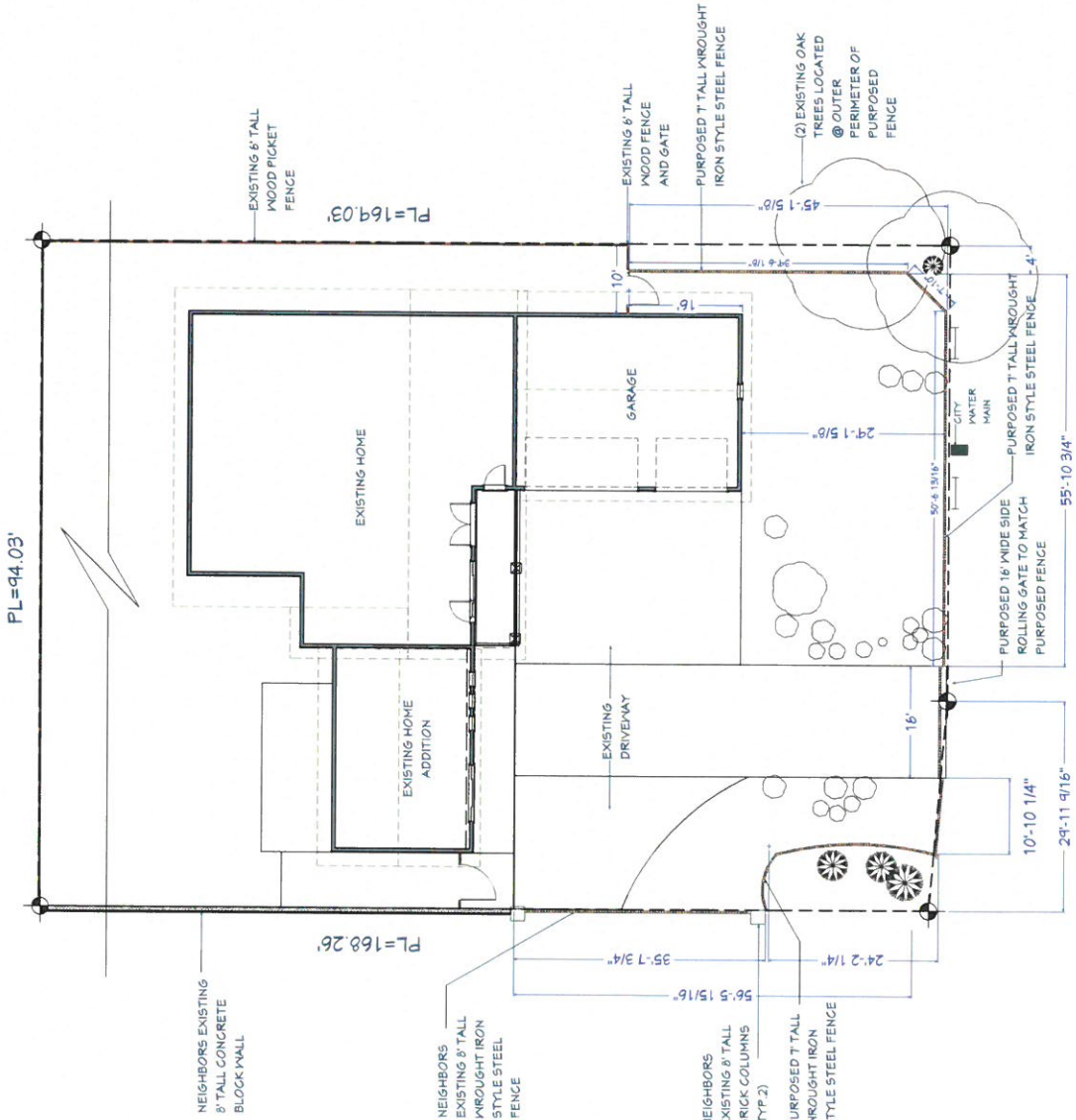
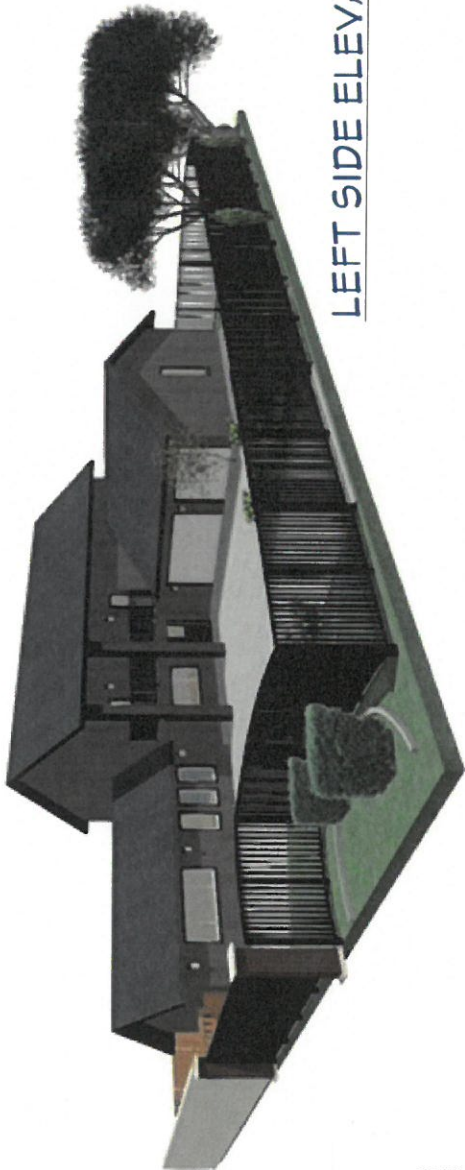
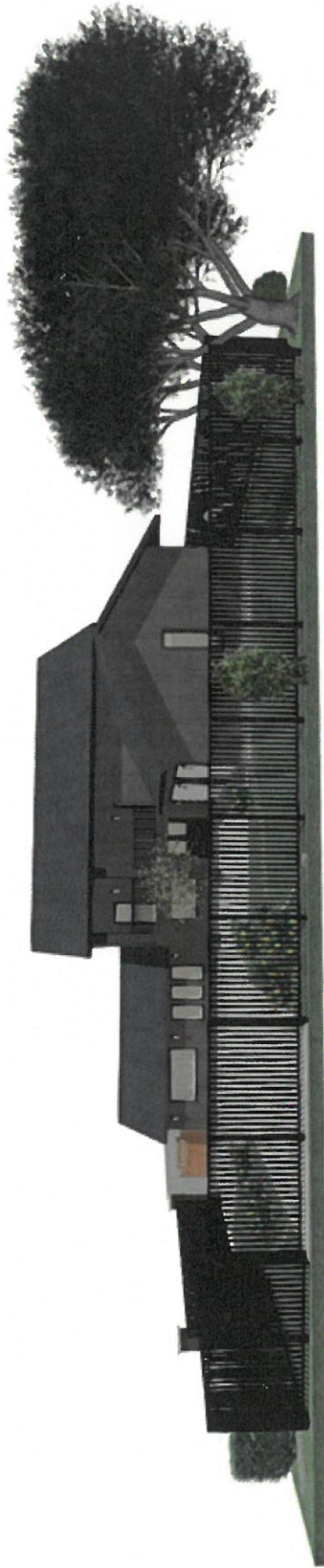


Exhibit "A"



LEFT SIDE ELEVATION



FRONT YARD ELEVATION

Exhibit "B"

NUMBER	DATE	REVISION	DESCRIPTION

PROPERTY OWNER:  
 BRIAN ICEHOVER & ROBYN GRAYAN  
 SITE ADDRESS: 2821 W BORDER LINKS DR

DRAWINGS PROVIDED BY:  
 CAMILA GUTIERREZ  
 FCH GENERAL CONTRACTING INC  
 LICENSE # 1515  
 (554) 766-9294

DATE: 8/14/2018  
 SCALE: 1/8" = 1'  
 SHEET: A-2

# Addendum to the Zoning Variance Permit Application

Applicants: Brian Icenhower & Robyn Graham-Icenhower

General Contractor: PCN General Contracting, Inc. – Camila Gutierrez

Address: 2821 W. Border Links Drive, Visalia, CA 93291

Short Title: 7' Fence Variance/Exception Permit

Applicants are requesting a zoning variance/exception permit to allow an 7' tall "wrought iron style" steel fence with a rolling gate around the front yard of their residential home located at 2821 W. Border Links Drive, Visalia, CA 93291. The application for a zoning variance permit to construct an 7' tall fence with more than 50% visibility exceeds the 4' height limitation imposed by §17.36.030 of the Visalia Municipal code governing the construction of fences for single-family residential homes. Applicants provide their reasoning and analysis to be granted a permit to construct 7' fence in accordance with all five of the requisite findings for a variance/exception to be approved with the following:

## FINDINGS FOR A VARIANCE TO BE APPROVED

**1. That a strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning.**

Since the neighborhood surrounding the subject property is located immediately to South of the Visalia Country Club golf course, both criminals and vagrants are free to travel on foot and bicycle across the golf course at night without fear of being noticed by police patrols. As a result, there has been an abnormally high level of criminal activity in the subject neighborhood. Attached as Exhibit #1 showing a LexisNexis Community Crime Map illustrating all reported criminal activity in the subject neighborhood over the period of the last year from August 2017 to August 2018.

This increase in criminal activity is further evidenced in Exhibit #2 showing 6 "Next Door" application screenshots of posts and comments submitted by the residents of the subject neighborhood about suspicious and criminally-related activities within the past 12 months. Further, Exhibit #3 shows a "Next Door" application screenshot **posted by applicants** of a video of a delivery package being **stolen from the front door step of the subject property** on May 9, 2018.

It is for these reasons that many of the residents in the subject neighborhood have chosen, and have been permitted to, construct fences well over the 4' maximum height requirement stated in Visalia City Municipal Code §17.36.030. The initial purpose of this zoning regulation was to enhance aesthetic appeal by opening up the visibility of the homes to the street-view with shorter 4' fences. However, the fact that such a large majority of the homes in the subject

Exhibit "C"

neighborhood have been granted variance/exceptions to this 4' tall limitation evidences the fact that a strict interpretation of the regulation does in fact result in unnecessary hardship inconsistent with the purposes of the zoning. In this case, the unnecessary hardship is clearly a lack of adequate security for the residents of the neighborhood. To limit the level of security in exchange for the questionable aesthetic appeal of shorter fences has clearly been determined as inconsistent with the purposes of the zoning by previous Visalia City Staff and Planning Commission decisions.

**2. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other properties classified in the same zoning district.**

The subject neighborhood, known commonly as either Green Acres, Hyde Park, or the Visalia Country Club area, has one of the highest average property values in the City of Visalia. Visalia's average home price is approximately \$249,000, and the average home price of the subject neighborhood is approximately \$600,000. The majority of these homes are very large in size and are located on large lots. These high-valued homes make them an especially attractive target for crime.

Other neighborhoods with similarly high average property values within the city limits are typically located within gated communities, and therefore benefit from the protection afforded by a contained community that does not permit criminals and vagrants from easily accessing the homes.

Furthermore, the relatively large lots make higher front fences with gates more appropriate and appealing from an aesthetic point of view. It may not be aesthetically appealing for a home situated on a 7,500 square foot lot to have a 6' to 8' tall fence in front of it. However, a large number of the homes located in the subject neighborhood with 15,000 to 20,000 square foot lots have wrought-iron style fences that permit more than 75% visibility through the fences. This can allow views of large and well landscaped yards through from the street. The subject property is situated on a 16,150 square foot lot and is currently undergoing major landscaping renovations to restore the property up to the standards currently exhibited by the neighborhood.

Consequently, it is the applicants' contention that the high property values and the larger homes/lots in the subject neighborhood created the requisite "exceptional conditions" to justify the City of Visalia Staff and Planning Commission's granting of so many variance/exception permits for fence height in the neighborhood in recent years. Further, applicants maintain that the same finding and determination should be applied to their home as well.

**3. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.**

As previously stated, a large number of the homes in the subject neighborhood have been granted variance/exception permits in recent years. Despite the fact that Visalia City Municipal Code §17.36.030 requires a 4' maximum fence height, many homes have been permitted to build 6' to 8' tall fences. Applicants have attached exhibits #4 - #12 to show photos and front yard fence heights of 9 homes located in the subject neighborhood. All of the homes shown in these photos have front yard fences with gates that are 6' to 8' tall. There are also many additional homes from the neighborhood that could have been submitted as exhibits as well.

Therefore, it is clear that the strict or literal interpretation and enforcement of the 4' fence height limitation in Visalia City Municipal Code §17.36.030 would clearly deprive the applicants of the privileges enjoyed by owners of the other properties located in the very same neighborhood.

**4. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.**

Again, exhibits #4 - #12 show photos and front yard fence heights of 9 homes located in the subject neighborhood with front yard fences with gates that are 6' to 8' tall. In fact, exhibit #4 contains two photos of the fence around the front of the adjacent property located at 2803 W. Border Links Drive. This home, **located immediately next door to the applicants' home**, has **8'6" tall brick columns supporting a 7'9" wrought iron style fence** around the front yard of their home.

Based upon these examples of past precedent in the subject neighborhood, it is clear that the granting of this variance/exception to the 4' fence height limitation in Visalia City Municipal Code §17.36.030 would not constitute a grant of special privilege inconsistent limitations previously imposed on other properties.

**5. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.**

The subject property is not located on a corner-lot. The property is instead sandwiched in between two other homes on its East and West sides. Accordingly, the construction of a 7' tall wrought-iron style fence w/ rolling gate will not in any way obstruct visibility that might interfere with traffic safety in the public right-of-way or to adjacent properties. In fact, the home pictured in the two photos in exhibit #4 is located immediately next door to the applicants' home and has 8'6" tall brick columns supporting a 7'9" wrought iron style fence around the front yard of their home. As a result, there can be no way that the granting of the variance/exception could be deemed detrimental to the public health, safety or welfare, or material injurious to properties or improvements in the vicinity.



## **FINDING FOR AN EXCEPTION TO BE APPROVED**

**1. That the granting of the exception will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.**

The subject property is not located on a corner-lot. The property is instead sandwiched in between two other homes on its East and West sides. Accordingly, the construction of a 7' tall wrought-iron style fence w/ rolling gate will not in any way obstruct visibility that might interfere with traffic safety in the public right-of-way or to adjacent properties. In fact, the home pictured in the two photos in exhibit #4 is located immediately next door to the applicants' home and has 8'6" tall brick columns supporting a 7'9" wrought iron style fence around the front yard of their home. As a result, there can be no way that the granting of the variance/exception could be deemed detrimental to the public health, safety or welfare, or material injurious to properties or improvements in the vicinity.

**2. That the granting of the exception does not create an obstructed visibility that will interfere with traffic safety in the public right-of-way or to adjacent properties.**

As mentioned before, the subject property is not located on a corner-lot. It is instead situated in between two other homes on its East and West sides. So there is no way that the construction of the proposed fence and gate could impair traffic visibility. The aforementioned home shown in exhibit 4 is located immediately to the East of the subject property and already has a 7'9" fence with 8'6" brick pillars. The other adjacent home located to the West of the subject property has thick trees and bushes in between the two homes that already obscure visibility between the two properties. Plus, that property's driveway is located around the corner in a cul-de-sac. Accordingly, the construction of a 7' tall wrought-iron style fence w/ rolling gate will not in any way create an obstructed visibility that might interfere with traffic safety in the public right-of-way or to adjacent properties.

**3. That the exception proposal becomes an integral part of the existing site development (e.g., design, material, contour, height, distance, color, texture).**

It has, and will continue to be, the applicants' intention to renovate the subject property to bring it up to the standards already exhibited by the homes in the subject neighborhood. The five homes shown in exhibits 6, 7, 8, 9 & 10 all have black wrought-iron style fences with rolling gates around the front yard of their properties along their property lines. It is also the applicants'

intention to also construct a black wrought-iron style fence with a rolling gate just behind their front yard property lines as well.

As previously mentioned, all of the 9 properties from the subject neighborhood shown in exhibits 4-12 have fence heights between 6'-8' tall. It is the applicants desire to construct a 7' tall fence. This is especially important since the applicant's immediate neighbor has a 7'9" fence with 8'6" brick pillars. To construct a fence that was too much shorter than the neighbor's fence would be visibly incongruent and aesthetically unappealing.

Therefore, the construction of a 7' tall wrought iron style fence with rolling gate would in fact become an integral part of the existing site according to the standards that the City of Visalia staff and Planning Commission applied in approving many past variance/exceptions for other similarly situated properties in the subject neighborhood.

# EXHIBITS #s 1 – 18

## EXHIBIT #1

LexisNexis Community Crime Map illustrating all reported criminal activity in the subject neighborhood over the period of the last year from August 2017 to August 2018.

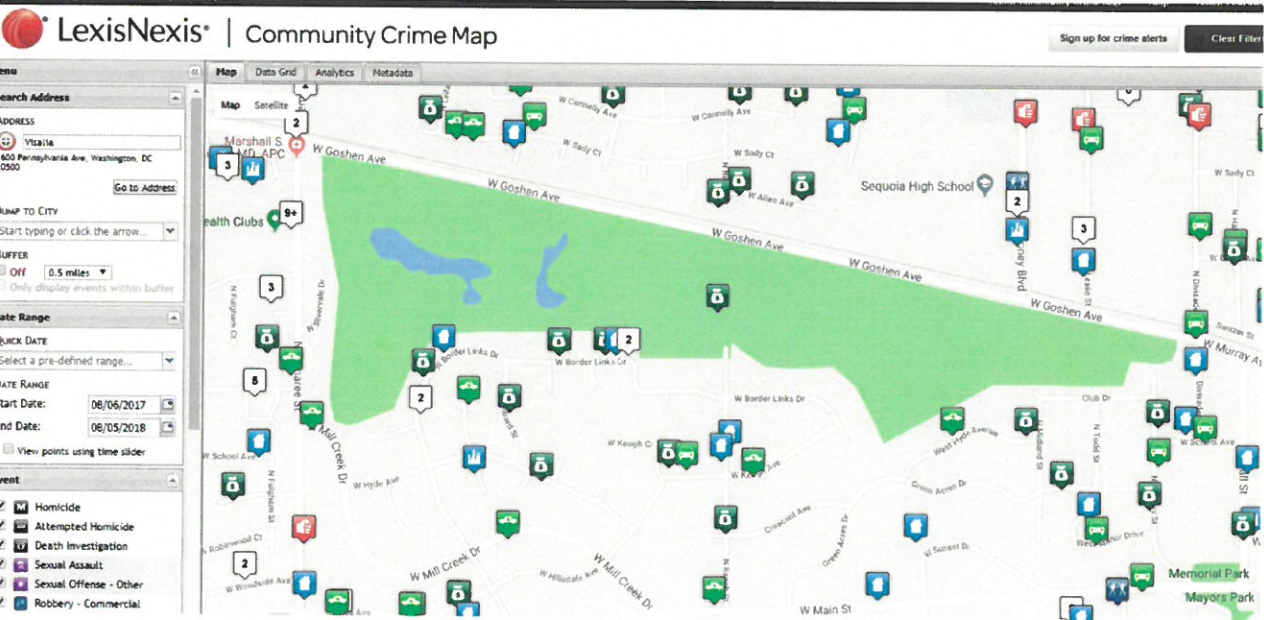
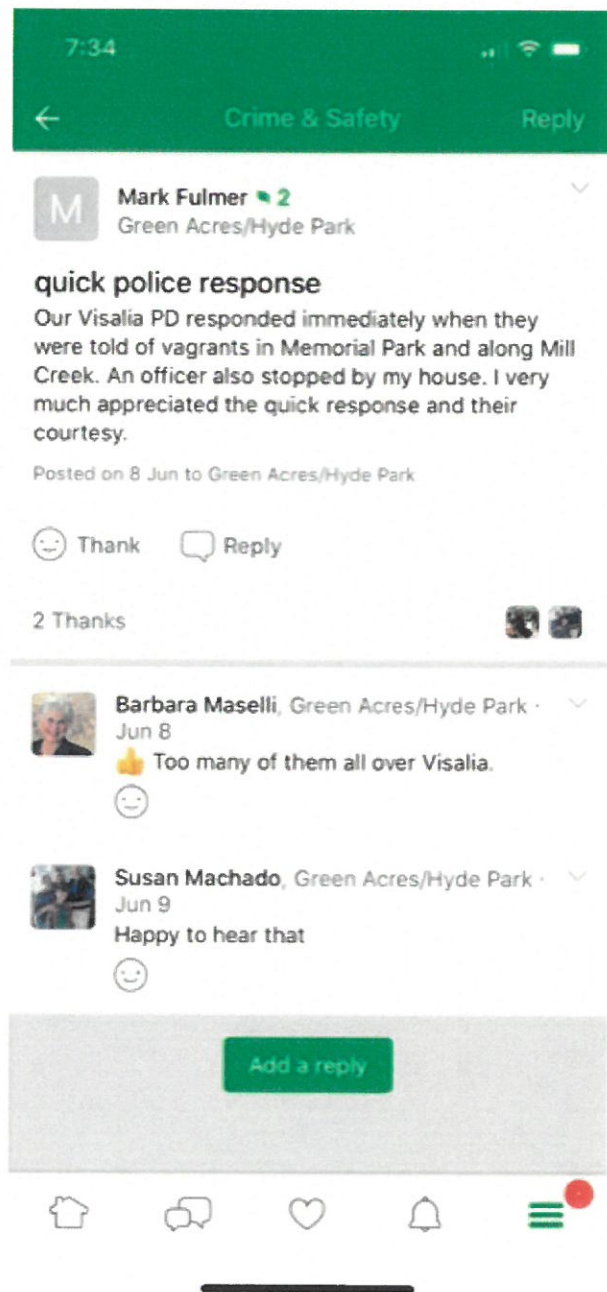
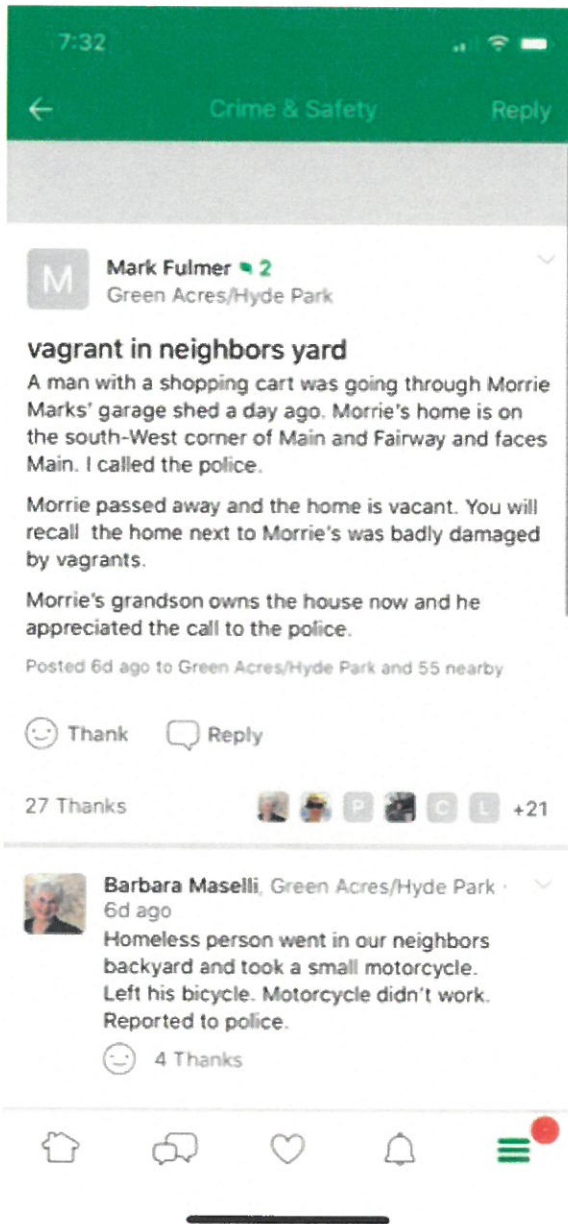


Exhibit "D"

EXHIBIT #2

Six "Next Door" application screenshots of posts and comments submitted by the residents of the subject neighborhood about suspicious and criminally-related activities within the past 12 months.



**M** Mark Fulmer  2  
Green Acres/Hyde Park

**vagrant coming into yard**

A short, dark haired man with a pony tail was wandering into yards around Fairway and Club. He had a green shirt and dark pants. He came up to the houses and looked around. He took fruit from a neighbor's tree. We saw him seemingly hiding behind our hedge. We heard him talking loudly to himself. He stayed around perhaps 30 minutes. The police were notified. He did not appear to have a car.

Person 1  
Hair: Dark hair ponytail  
Top: Green shirt  
Bottom: Dark pants  
Age: 30s?  
Sex: Male  
Physical Build: Short, medium build

Posted on 23 May to Green Acres/Hyde Park

 Thank  Reply

6 Thanks



**C** Cheri Robertson, Green Acres/Hyde Park · May 20  
Bad!!!!  
 1 Thank

**W** Wendy Mitchell, Green Acres/Hyde Park · May 20  
People are casing our neighborhood. I see them when I walk, cars you know don't belong here and people on bikes. Have packages delivered to your back area, your work or a neighbor you know will be home.  
 2 Thanks

**L** lisa Quintero, Vassar · May 20  
Please get locked mail packages because packages and debit cards have been stolen report to police any suspicious activity  
 2 Thanks

**B** Bill Benneyan, Green Acres/Hyde Park · May 20  
Don't know who she is, but will be on the lookout!  
 1 Thank

 Dan Nguyen, Manuel Hernandez · May 20  
Please post all pictures to all available sites in Vivalis for help with



**Dan Nguyen, Manuel Hernandez** · May 20  
Please post all pictures to all available sites in Visalia for help with identification.

😊 3 Thanks



**Denise Athy, Pinnacle** · May 20  
If you have an office or other place to deliver where there are constant people, have everything delivered there. I've been thinking about having my Blue Apron delivered to my office so I can avoid this.

😊 2 Thanks



**Lisa Quintero, Vassar** · May 20  
Do not recognize



**Anthony Mendoza, Conyer** · May 20  
So sorry, I hope she gets caught.

😊 2 Thanks



**Carolyn Richards, Green Acres/Hyde Park** · May 21  
Be sure to ask the neighbors - someone might have seen her get into a car. So sorry.

😊 1 Thank



**Lisa Quintero, Vassar** · May 20  
Do not recognize



**Anthony Mendoza, Conyer** · May 20  
So sorry, I hope she gets caught.

😊 2 Thanks



**Carolyn Richards, Green Acres/Hyde Park** · May 21  
Be sure to ask the neighbors - someone might have seen her get into a car. So sorry.

😊 1 Thank



**Patty Castro, Green Acres/Hyde Park** · May 22  
I'll keep an eye out.



**Merri Bland, Vassar** · May 22  
I left a note on my mailbox for the FedEx man to put my package over the fence to my backyard. He left me a note that said he is not allowed to put over the fence and he put under my mat instead

😊 1 Thank

Add a reply

EXHIBIT #3

“Next Door” application screenshot **posted by applicants** of a video of a delivery package being stolen from the front door step of the **subject property** on **May 9, 2018**.

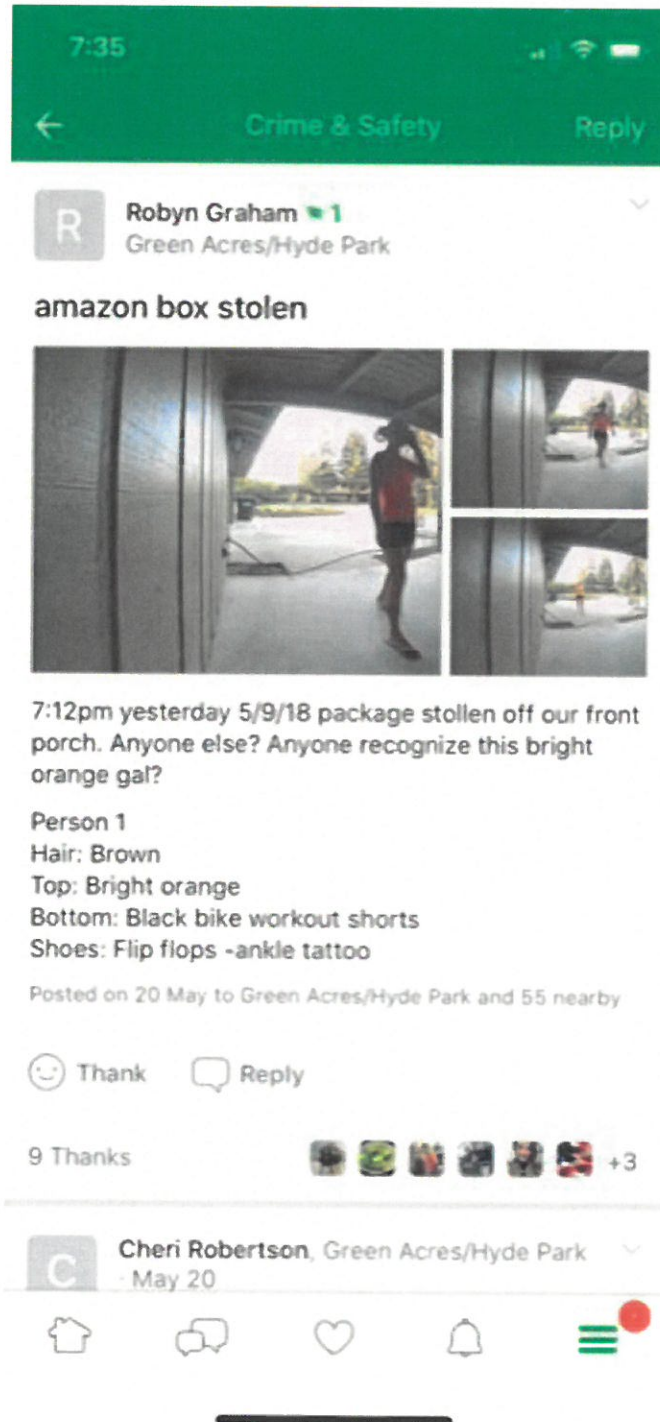


EXHIBIT #4

Two photos of the fence around the front of the adjacent property located at 2803 W. Border Links Drive. This home, **located immediately next door to the applicants' home**, has **8'6"** tall brick columns supporting a **7'9"** wrought iron style fence.







EXHIBIT #5

Photo of the home located at 2440 W. Border Links Dr., the same street as the **subject property**, with a **6' tall fence** and rolling gate with **only 5 – 10%% visibility** through the fence.



EXHIBIT #6

A photo of the home located at 2510 Green Acres Drive, with a **6'7" tall wrought-iron style fence and rolling gate**, virtually identical to the style proposed by applicants.



EXHIBIT #7

A photo of the home located at 445 Midland with **6'9" brick pillars** supporting a **6' wrought iron style fence with rolling gate**.



EXHIBIT #8

A photo of the home located at 2630 Green Acres Drive with a **6'8" wrought iron style fence and rolling gate.**



EXHIBIT #9

A photo of the home located at 1847 Club Drive with a **6' wrought iron style fence and rolling gate.**



EXHIBIT #10

A photo of the home located at 200 Midland with a **6'8" tall wrought-iron style fence and rolling gate.**



EXHIBIT #11

A photo of the home located at 2530 Green Acres Drive with a **6'6"** brick and wrought-iron fence with gate.



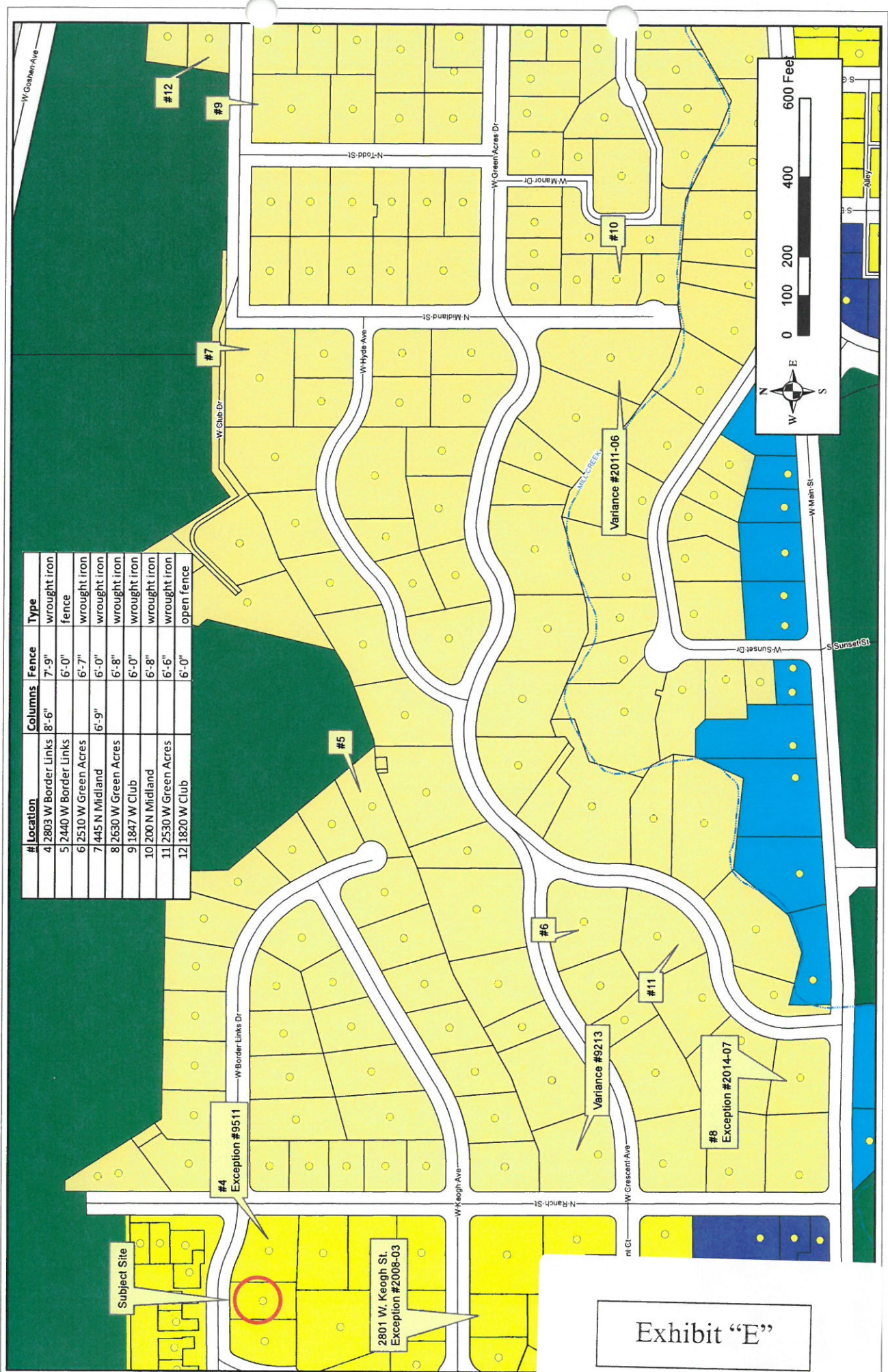


EXHIBIT #12

A photo of the home located at 1820 Club Drive with a **6' tall fence** with less than 50% visibility.



# Location	Columns	Fence	Type
4 2803 W Border Links	8'-6"	7'-9"	wrought iron fence
5 2440 W Border Links	6'-0"	6'-0"	wrought iron fence
6 2510 W Green Acres	6'-9"	6'-7"	wrought iron fence
7 445 N Midland	6'-0"	6'-0"	wrought iron fence
8 2630 W Green Acres	6'-8"	6'-8"	wrought iron fence
9 1847 W Club	6'-0"	6'-0"	wrought iron fence
10 200 N Midland	6'-8"	6'-8"	wrought iron fence
11 2530 W Green Acres	6'-6"	6'-6"	wrought iron fence
12 1820 W Club	6'-0"	6'-0"	open fence

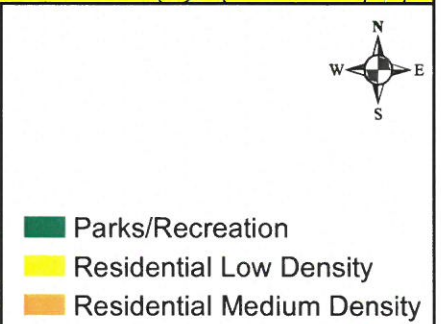
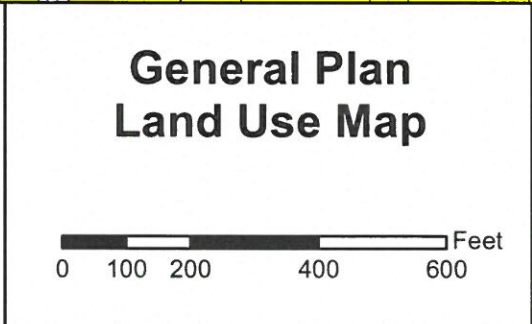
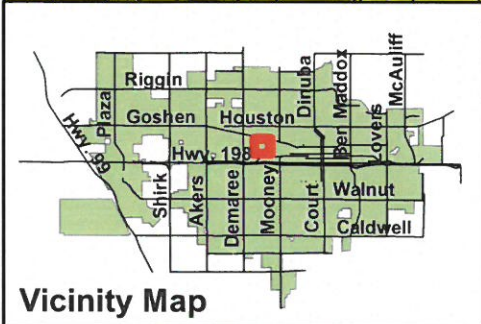
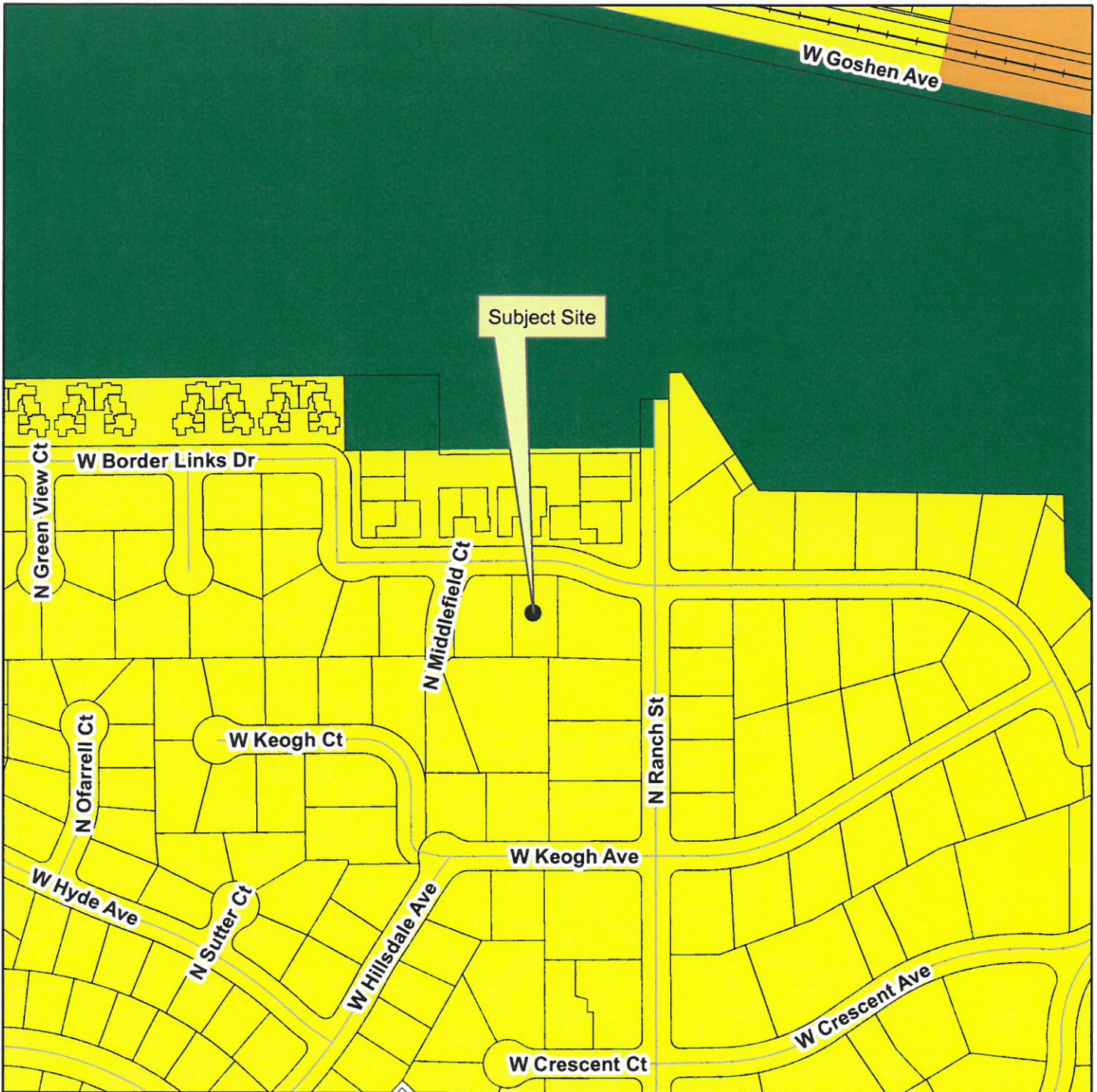


2801 W. Keogh St.  
Exception #2008-03

Exhibit "E"

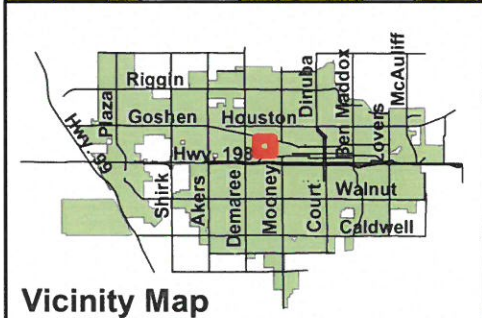
# Variance No. 2018-10

The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).



# Variance No. 2018-10

The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).



## Zoning Map



- Q-P - Quasi-Public
- R-1-12.5 - Single-family Res.
- R-1-5 - Single-family Res.

Vicinity Map

# Variance No. 2018-10

The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).

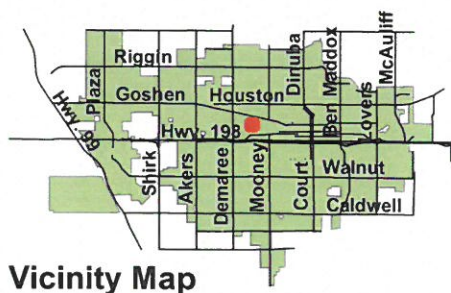


Subject Site

N Ranch St

W Border Links Dr

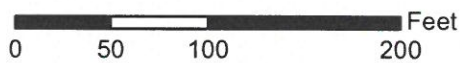
N Middlefield Ct



Vicinity Map

## Aerial Photo

Photo Taken March 2016



- WATERWAYS
- RAILROADS
- CITY LIMITS
- PARCELS

# Variance No. 2018-10

The site is located at 2821 W. Border Links Drive. (APN: 089-124-012).

