

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 11/18/2014
Agenda Item: 2**

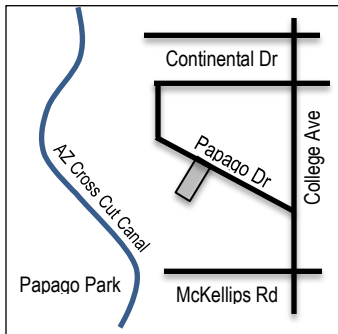
ACTION: Request for an Appeal of the Hearing Officer Approval of a Use Permit for a second story balcony on a single story house at the NUNES RESIDENCE (PL140286), located at 35 East Papago Drive. The appellant is Dawne Walczak.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approval, subject to conditions

BACKGROUND INFORMATION: .On October 7, 2014 the Hearing Officer approved the request by the Nunes Residence for a Use Permit for a second story balcony on a single story house. At the hearing, a neighboring property owner spoke on record in opposition to the request and submitted a letter of opposition which was included in the Hearing Officer report attachments. The Hearing Officer approved the request based on the finding that the use permit met the criteria to warrant approval. . On October 21, 2014 Dawne Walczak filed an appeal of the approved Use Permit. The appellant’s letter of appeal is attached with a copy of the Hearing Officer: staff summary report and attachments from the October 7th hearing and meeting minutes as background information. . This request includes the following:

UPA14003 Use Permit to allow a second story balcony on a single-family residence.



Property Owner	Kellie and John Nunes
Applicant	Kellie and John Nunes
Zoning District	R1-6 Single Family Residential
Lot Size	.286 acres
Building Size	1,487 s.f. + 141 s.f. addition = 1,628 s.f.
Parking Required/Provided	2/2
Setbacks Required	20' front, 5' side, 15' rear

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Sherri Lesser, Senior Planner (480)-350-8486

Department Director: Dave Nakagawara, Community Development Director
 Legal review by: N/A
 Prepared by: Sherri Lesser, Senior Planner
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

APPEAL PETITION FROM GRANT OF USE PERMIT

Applicants: John and Kellie Nunes

Application number: ZUP14103

G. Manoil and D. Walczak (“Petitioners”) petition the Development Review Commission (the “Commission”) for relief from the determination of Vanessa McDonald, Hearing Officer (hereinafter “the H.O.”) respecting the application for use permit (the “Application” for the “Permit”) for the so-called “Nunes Residence” at 35 East Papago Drive, Tempe (the “Property”).

I. Petitioners submit that the H.O.’s decision was in error because the Application was filed by a party with no standing to make the Application, and thus the foundational requirement to review the application and take such action was lacking.

II. In the alternative, Petitioners appeal the H.O.’s grant of the use permit because the approval is grounded in errors of fact and law as specified below.

The grounds for Petitioners’ appeal are as follows:

I. The Purported Application is a Nullity

While the equities strongly militate against the grant of the Permit under any circumstances, as a threshold matter, the Commission must address the complete invalidity of the Application *as a matter of law*.

The City of Tempe Zoning and Development Code (the “Code”), Section 3-420, requires a use permit for “any single story, single-*family* residence to add, expand, or rebuild for a second story.”¹ The Code further provides as follows:

A. Initiation of Application. An application may be initiated under this Code by the City Council or by the owner of the subject parcel. The property owner’s written authorization shall be required for all applications. . . . (Code Section 6-201(A))

Clearly the City Council did not initiate the subject application. The owner of the Property is the “Kellie Michele Trust” (the “Trust”) according to the records of the Maricopa County Assessor. The last referenced deed to the Property on the Assessor’s website, recorded at Instrument no. 2012-0192209 in the Official Records of Maricopa County, reflects “Kellie Michele Vanda, Trustee of the Kellie Michele Trust, dated December 9, 2005” (the “Trust”) as owner of the

*14 OCT 21 VALIDATED

¹ The Code defines as follows: *Second story, single-family* means any floor level that is above ground or main floor of the dwelling, except mezzanines per building code. (Code, Part 7 Definitions.) The plain implication is that as soon as a floor is placed above the main one, a second story requiring a use permit arises, excepting only mezzanines under the building code. Mezzanines are by definition interior, not exterior, structures; a mezzanine cannot exist without a ceiling above it, so the exception is irrelevant to the Application.



subject property. Although the names differ and are somewhat convoluted, it is plain that the owner of the Property is in fact the Trust. Thus, under the Code, only the Trust is entitled to initiate an application for a use permit for the Property. Further, the property owner's written authorization is required.

The Application was filed by "John and Kellie Nunes". No reference is made to the owner of the Property anywhere in the Application. The owner of the Property did not sign the Application. Because the Applicants do not own the Property, the Application is simply wholly invalid as a matter of law from the start. It is a nullity: the City of Tempe has and has had no application upon which it may take or have taken any action whatever except to reject and expunge it.²

No amendment to rehabilitate the Application and grant a use permit in retrospect can be proper. Interested parties have already been prejudiced as to this case. Specifically, neighbors and others have received legal notice only of an Application that is utterly invalid under the Code. No one is required to respond to an action that is plain-as-your-nose invalid and capable only of rejection by those paid by the City and charged with inspecting applications. To those familiar with the Code, deception and insufficiency should leap from this Application, but even those less versed in the Code could not readily conceive that this Application could be approved.

Further militating against some bizarre effort of resurrection is the sheer impossibility of interpreting the concomitants of the determination of the H.O. on October 7 "granting the use permit". This would require costly and burdensome untangling. To whom or what was the use permit granted exactly? Does it belong to the owner of the Property? Does it belong to the Applicants, who lack a legally cognizable interest in the Property? In what character do the Applicants take the use permit, since it is not as owners of the Property? Is it as tenants? Is it as the beneficiary of the Trust and spouse? Is the spouse now become an unnamed beneficiary of the Trust *res*? If the grantees under the Application divorce next month, is the use permit community property? If someone falls from the deck, may the Trust claim it has no liability because it had no involvement in the creation of the use? Who is liable: the property owner, or the use permittees? May claims or litigation be brought by any collaterally damaged parties who expect, in all simplicity, that the City will just conform to its codes?

The Commission's best option to resolve the tangle is patently the one impressed by Alexander on the Gordian knot. In short, Applicants cannot lawfully elect for the Property to be owned by the Trust when it suits them, gaining the liability and asset protections available to such an entity, and then call some other party the owner for other purposes such as promulgation of deceptions in a use permit application. Such permits must be applied for by "the owner of the subject

² Kellie M. Nunes, the former Kellie Michele Vanda, one of the Applicants and the trustee of the Trust, certainly knows and understands that the Trust and she (and thus her marital community) are completely distinct legal entities. The Trust was nominally created on December 9, 2005. On January 23, 2006, Kellie Vanda transferred property located in Saratoga Lakes Unit 6 (the "Saratoga Property"), acquired in June, 2005, to the Trust (Maricopa County Records doc. no. 2006-0092815A). On April 7, 2010, Kellie Michele Vanda, trustee of the Trust, transferred the Saratoga Property to Kellie Michele Vanda, an unmarried woman, by quit-claim deed (MCR doc. No. 2010-0291510). Subsequently, on April 12, 2010, Kellie Michele Vanda again transferred the Saratoga Property to the Trust (MCR doc. 2010-0304341). In each instance the distinction was clear to her in her respective capacities as transferor *and* transferee.

parcel” under the Code. The Commission must perforce take a sword to the Application and invalidate it; no other determination is available, let alone sensible.

Noteworthy, too, if the decision of the H.O. is deemed correct as to substance, then avoiding the Application can cause no injury to either the Applicants or the property owner. The H.O. found that the proposed deck “isn’t even a second story” but rather, “as the code defines it, an intermediate level.” If the deck is not a second story, unsurprisingly, no portion of the Code requires an application for a second-story use permit: as the H.O. further determined, “the purpose for being here is because we still, because the City thinks that it’s worthwhile to go through the notification process and let neighbors know when a change is coming” even though not mandatory under the Code. If the H.O.’s findings are right, no use permit was needed, and it is a forced conclusion that no prejudice to either the Applicants or the property owner can inhere in the annulment.

II. Specific Grounds for Appeal

A. The H.O.’s Findings are Legally Insufficient under Sections 6-308(E)(1), (E)(2)(b) and (E)(2)(c)

The H.O. failed to acknowledge the adverse impact on the neighborhood and particularly on the neighbors pursuant to Code Sections 6-308(E)(1) and (E)(2)(c). Rather, she ignored the disputed issues or simply recited a general belief without reference to the evidence or proofs.

Pursuant to the Code, a use permit cannot be granted absent

a finding by the decision-making body that the use covered by the permit, the manner of its conduct, and any building which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or, or to the public welfare in general . . . (Code Section 6-308(E)(1))

The H.O. made no finding in conformity with this requirement. This is more than a technical peccadillo on the part of the H.O. The H.O. refused to consider seriously any evidence on the issue at all, including the whole unrefuted objection of Petitioners on the basis of the use’s adverse impact on them. Applicants made no representation one way or the other on this point in their “letter of explanation”.

Applicants also made no showing in accordance with this Code Section 6-308(E)(2)(b) and (c), specifically that the project will cause no “nuisance arising from . . . noise” and that the project would “not contribute to the deterioration of the neighborhood or to the downgrading of property values”, as required. While Applicants did recite the language of the Code in their “letter of explanation”, more is required from an evidentiary standpoint. Additionally, Petitioners completely dispute Applicants’ assertion that “as part of the major remodeling, the proposed Deck will enhance the surrounding properties [*sic*] value.”

Petitioners have argued in their objection that a second-story observation deck is inappropriate where close proximity of houses ensures it provides a direct view down into the back yard of adjacent properties. It is equally noxious that Applicants will remove existing barriers to ordinary noise by promoting it to the level of a deck that will be higher than a raised musical stage.

Obviously, noise from any conversation on the deck will carry farther than if it were at ground level; public speakers mount a platform to speak to crowds and public address speakers are placed high up for this very reason. Any talk, or music, or radio broadcast, or indeed any sonic event will carry for a considerably greater distance when elevated than would the same one at ground level, where it is buffered by plantings and privacy walls.

The physical appeal of the properties on the south side of Papago Drive is dependent on (a) privacy and (b) backyard views. Indeed, the MLS listing for the home from early 2012, from which the Nuneses presumably bought the Property, *emphasized* "PRIVACY AND MTN. VIEWS" as the two principal selling points; see listing attached as Exhibit "A" (under "Public Remarks"). Petitioners submit that Applicants already purchased *and have already got* the view they now claim they must rise up 9'3" for. As to the other selling point of the home: that the Applicants, having purchased the "PRIVACY" offered by the house now seek to *deprive* their neighbors of privacy is past all civil comment. Petitioners' Realtor, Roberta L. Voss, prominent both in her profession and as a former Arizona state legislator, has opined on the equities of the proposed deck from the real-property value as follows:

Note that the listing specifically comments about the privacy and mountain views unique to that property (and arguably unique to the properties with the southern backyard exposures on Papago Drive). Buyers *do* purchase property based upon these type of criteria and I would expect them to give greater value to such properties compared to other properties in the subdivision.

It is my opinion that the totality of the backyard experience on the south side of Papago Drive includes the privacy and the mountain views. Note that the mountain views already exist and benefit the properties without enhanced height or additional structures. In this case, I would be concerned with an additional exterior structure or deck affecting the value of the two adjacent properties because it will affect the backyard privacy experience for those two properties. Then the unintended consequence will be of making any other non-adjacent property on Papago Drive more attractive to a would be buyer and diminishing the desirability of the two homes affected by an outdoor, height-enhanced deck.

Petitioners are informed and believe that Ms. Voss would testify to the foregoing if called.

The loss of privacy to neighbors on the one hand and infliction of unwanted noise on the other are prohibited impositions under Code Sections 6-308(E)(1) and 6-308(E)(2)(b) and have great negative ramifications under Section 6-308(E)(2)(c). The loss of privacy is particularly acute where, as here, not just back yards but also neighbors' swimming pools become mostly or fully exposed by the raised deck. It is not up to Petitioners to demonstrate that a typical buyer doesn't want to be spied on from a nearby deck while bathing, or that he or she will not be disturbed in the back yard by conversations held at the elevation above that of a performance stage. Even before but especially *after* the privacy issues are broached in opposition, the burden is on the Applicants to show that both (a) sound issuing from their raised deck and (b) its provision of

unimpeded peeping are no burden on property such that a prospective purchaser would reduce a purchase offer on account of being put off by the prospect. Petitioners doubt Applicants can show any such thing: nearly nobody is happy to know that his or her yard and swimming pool are at all times exposed to view and that the neighbors have been granted a right to enforce audition of substantial noise from their raised platform.³

Furthermore, the H.O. plainly misunderstood the size of the deck. The H.O. misinterpreted the second-story deck to be identical in size to the room addition on the first floor below, or as she said, “141 square feet.” The proposed deck is 71 percent larger than that size, 240+ square feet at 12’4” by 19’6”, according to the face page of the Application. This is actually quite an expansion to a house of an existing 1487 square feet⁴; it would add a full one-sixth or more to the house if at ground level. Because the H.O. completely mistook the size of the deck, she did not understand its capacity for population. By way of example, the Boeing 737-800 flown by major airlines in America typically packs 16 first-class seats into about 166 square feet. The space on the proposed deck would permit some 23-24 First-Class seats on most airlines.⁵ Being looked down on by even one-half this number, as Applicants, staff, and the H.O. evidently propose, is an intolerable violation of the rights of those residing on adjacent properties. In no wise can the offered structure be called a “tiny little deck” precluding “the opportunity to invite many guests over”, as the H.O. erroneously finds.

Code Section 6-308(F) places on Applicants the burden of proof of showing no adverse consequence to adjacent and neighboring properties will result from the proposed use. While the H.O. did announce findings under Sections 6-308(E)(2)(b) and (c), these are based on no evidence beyond bald statements presented by the Applicants and staff. As to Section 6-308(E)(2)(b), the H.O. finds that she doesn’t believe “that just because Applicants would be up nine feet . . . that would create a nuisance in terms of noise”. Where, as on Papago Drive, one can hear a dropped spoon three houses away during much of a still night, this is untrue. Ordinary conversation elevated 14.5 to 15 feet above ground level will be heard in the yards of two or three houses on either side nearly all the time, to say nothing of the many potentially louder sounds. The Applicants must affirmatively show no noise nuisance will occur from the deck. Similarly with Section 6-308(E)(2)(c), the H.O. had no evidence from the Applicants that the observation deck would have no impact on downgrading of property values beyond her personal belief that investment in a neighborhood “is **always** a good thing [emphasis added]”, or is at least when the City ignores the deleterious effects on the neighbors and their property values.

³ The Applicants have contended that no view of the Petitioners’ swimming pool will be available to a person standing on the proposed deck at that point most conducive to it, offering as evidence a photograph so framed as to obscure any such view. Petitioners submitted to staff that this photo was an error. Applicants then submitted a supposed correction to the misleading picture. This revised picture of Applicants enables Petitioners to assert that the photographic “evidence” offered by Applicants is a deliberate misrepresentation. The H.O. did not rule on the sufficiency of the evidence of Applicants, who have the burden.

⁴ That is, 1487 according to staff’s figures; the MLS listing of 2012 shows the square feet at 1344.

⁵ Or 36 in Economy seating.

B. The H.O.'s Determination Errs Under Section 6-308(E)(2)(d)

Code Section 6-308(E)(2)(d) requires a determination of compatibility with “existing surrounding structures and uses.” Instead of looking to the character of the subdivision in which the Property is located, however, the H.O. looked to properties in a different subdivision of generally older homes located on vastly larger lots. In failing to consider the “existing **surrounding** structures”, the H.O. considered as controlling the existence of two second-story houses allegedly “to the south” of the Property.⁷ The neighborhood in which those houses are located is of a completely different character from the Property. Only one second-story house in the adjacent subdivision is even vaguely visible from the ground level of the Property; it stands nearly entirely cloaked by trees at a distance greater than one football field away from the Property.

The surrounding properties in Papago Parkway 6 are not at all as stated by Applicants, staff, and the H.O. Though small, the houses are neat and generally well maintained (“Average” in the parlance of the Maricopa County Assessor), with a few having been extensively modified and upgraded since construction. Though perhaps an “older neighborhood”, as staff reports, Papago Parkway 6 is not a cluster of derelicts urgently needing from Applicants “significant investment” to “revitalize the area” even supposing that this was what the Applicants planned to do. Far from being impliedly aged and run-down, many of the homes have seen substantial upgrades even without the allegedly revitalizing influence of the Applicants.

As one example, from landscaping, though originally planted nearly exclusively with grass lawns, many of the homes in the subdivision have since seen yards replaced with xeriscaping design using native desert plants and trees. This is true of both the homes adjacent to the Property. Applicants’ home’s yard contrariwise remains patchy grass with palms, extremely ill-kept during the two-and-a-half years the Applicants have been its absentee owners. Applicants have suggested to the City that they desire to revitalize this unkempt front yard by *paving it nearly entirely*, though Petitioners apprehend that this concrete proposal has been denied by the City in conjunction with the use permit.⁸

As another example that the neighborhood is far from being the derelict *favela* implied, Petitioners’ own home was remodeled some years back by the same architect-contractor team that remodeled the downtown Tempe restaurant Tricks, Michael Wilson Kelly and John Woods. Paradoxically, a photograph of the popular restaurant hangs prominently in the offices of the Community Development department.

On the other hand, neither is Papago Parkway 6 a subdivision of grand estates each separated by hundreds of feet and towering trees and hedges. As stated at length in Petitioners’ objection to the Application, the subdivision in which the Property is located is of modest single-family residences. It contains just more than 200 homes, all of a similar character, as having been developed by Staggs in the late ‘50’s to early ‘60’s. *Not one* of the homes exceeds one story, being deed-restricted. Most of the houses are 15 feet or fewer from their neighbors, because

⁷ In point of fact, no second-story structure exists or is visible to the south as “south” is commonly used, *i.e.*, signifying the compass points between 135 and 225 degrees.

⁸ Petitioners confessedly do not understand the residential paving project’s germaneness to the use permit application.

seven feet was the required side-yard setback at the time of construction. The lots are generally some 80 feet wide, and Applicants' is 78 feet, one of the narrow seven of the 18 lots on the south side of Papago Drive. Applicants' house stands ten feet from its west-side neighbor and 14 feet from the east one.

None of these comparable homes was considered in the H.O.'s determination. Instead, the H.O. proposed to look 350 feet in the distance, to a different subdivision, to determine what constituted an "existing surrounding structure." In the supposedly comparable Campo Allegre subdivision, the homes stand on sites averaging just less than 1.50 acres. Applicants' property is 0.286 acres. *Five* parcels the size of Applicants' would fit in the average Campo Allegre parcel. Homes in the Campo Allegre subdivision average 150 feet to 175 feet in separation, and such separating ground is abundant with Arizona central-desert foliage, including saguaros, cholla, ocotillo, creosote, and tall, mature *palos verdes* and mesquites. These homes bear so little similarity to the Property that it is risible to compare them: custom vs. tract, large parcels vs. small, wide separation vs. less than 15 feet; intervening plants vs. privacy walls. Meanwhile, the homes 10 feet from Applicants' house, in the same subdivision, are ignored as "existing surrounding structures" by the H.O.'s finding similarity in structures in a different subdivision and respectively *34 times* and *66 times* farther from Applicants' house than is the Petitioners'.⁹ A real-estate appraiser who prioritized this quality of "comp" and ignored the 25 houses that are not only closer, but of identical single-story construction, would risk licensure or even fraud proceedings. The H.O. cannot adduce Campo Allegre houses as the Property's "surrounding structures" under the Code.

C. The H.O. Erred in Granting a Second-Story Balcony Use Permit

Petitioners further assign error in the H.O.'s granting the "use permit application ZUP14103, the use permit to allow the second-story balcony on a single-family residence". No balcony is a subject of the Application. Applicants did not seek a balcony. No plans in the file show a balcony. The Tempe Zoning and Development Code requires that an application for a use permit be filed for the proposed use; filing for other uses is unavailing as to the use sought.

The Code does not define the term "*balcony*". As neither the H.O. nor staff names any other code under which it presumes to operate, Petitioners assume that the word is used by them in its ordinary character and has its ordinary meaning. The lexical definition of *balcony* of the *Oxford English Dictionary* is a "kind of platform projecting from the wall of a house or room, supported by pillars, brackets, or consoles and enclosed by a balustrade." See Exhibit "B".¹⁰ A "rooftop balcony" is an absurdity and impossibility. *A balcony projects from a wall.*¹¹

⁹ When Applicants shot photos to illustrate the two-story houses they proposed as "existing surrounding structures" they used the telephoto function; indeed, the houses can scarcely be seen otherwise. Notwithstanding its appearance in the photo, the Turner house, 340 feet distant, is not as close to Applicants' as the Petitioners' house, which is 10 feet away.

¹⁰ Petitioners have confirmed that the definition is not materially different under the International Building Code.

¹¹ This is truly not difficult to see. Anyone who went to Gammage, having paid for a seat in the *balcony*, upon being led up to the *rooftop*, would have just cause of complaint even if the seat was next to the balustrade.

As has been recited, Code Section 3-420, requires a use permit for “any single story, single-family residence to add, expand, or rebuild for a second story.” Upon information and belief, Applicants submitted their use permit application as for a “deck addition” purposing to “add low profile deck (12’4” x 19’6”) to the rear (south east) portion of the house” at 35 East Papago Drive to the Development Services Department pursuant to Code Section 6-206(B) on or about August 14, 2014.

Following such a submission, further according to Code Section 6-206(B), such application is to be reviewed for completeness, following which several steps of public notice ensue. Of exclusive relevance here is the adequacy of notice of the applied-for use under Code Sections 6-404(C) and (D). The notice of the Application posted pursuant to Code Section 6-404(C)(2) on September 19, 2014 stated a public hearing was scheduled upon the “Request: A Use Permit to allow the addition of a **second story balcony** [emphasis added] on a single story, single-family house for the NUNES RESIDENCE located at 35 East Papago Drive.” When this sign was replaced by one dated September 29, 2014, the language of the notice changed slightly, to “Request: Request approval of a **second story balcony** [emphasis added] on a single-story, single-family house for NUNES RESIDENCE, located at 35 E. Papago Drive. This applicant is John and Kelly Nunes.” The notice of hearing mailed under Section 6-404(C)(4) stated that “The Applicants, John and Kellie Nunes, are requesting approval for a use permit to allow a **second story balcony** [emphasis added] on a single-family residence.” While adequate to give notice of an application for a use permit for a second-story *balcony*, the notices above gave no public notice of the Application, which exclusively seeks a “deck addition,” not a “balcony”.¹² Nowhere in the Applicants’ submission to the Development Services Department is a balcony construction use sought, and the plans submitted to the City and available for viewing by the public show no construction that could conceivably give rise to the designation “balcony”. Thus, since the Application was not for a balcony, public notice of the Application was manifestly flawed and out of compliance with applicable provisions of the Code.

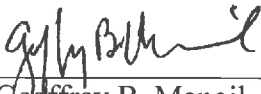
Neither the City nor the H.O. acting for the City is entitled to grant to Applicants relief that forms literally no part of their Application, nor may the City and the H.O. completely mislead the public about the substance of the actual application by heaping up repeated misrepresentations about part of, or, as here, the whole application. It is obvious that the deck for which plans actually were submitted is exactly what the Applicants titled it: a “Roof Deck”. Why the City gave notice of an application for a “balcony” is unknown. Of equal concern are the circumstances of the assent by Applicants to this modification of the use name; not Applicants John and Kellie Nunes nor their representative, Ms. Costello, objected in the least to this illicit permit conversion to a “balcony” at any time during the public hearing, nor upon review of the Staff Report, nor in the discussion of and subsequent holding of the H.O.

¹² Petitioners have not inspected and have no knowledge of the sufficiency of notice under any other Code Section.

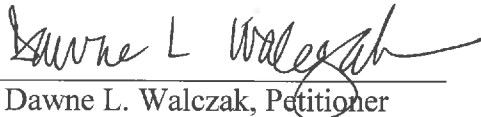
D. Appendix of Errors

The foregoing presents to the Commission only the most significant points upon which Petitioners seek redress on appeal. Errors from omissions, misapprehensions, and misrepresentations very densely pervade the Application, Staff Report, and the record of the hearing of October 7, 2014. Petitioners have listed substantially all the errors from which relief on appeal is sought in the Appendix of Errors attached hereto as Exhibit "C" and by this reference incorporated herein.

RESPECTFULLY SUBMITTED this 21st day of October, 2014.



Geoffrey B. Manoil, Petitioner
29 E. Papago Drive
Tempe, Arizona 85281-1120

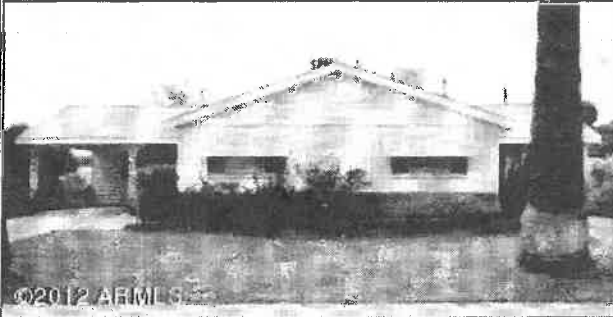


Dawne L. Walczak, Petitioner
29 E. Papago Drive
Tempe, Arizona 85281-1120

Client Report (1)

35 E PAPAGO DR Tempe, AZ 85281

\$130,000

	4698251 Residential Single Family - Detached Closed	
	Beds/Baths: 3 / 2 Bedrooms Plus: 3 Approx SqFt: 1,344 / County Assessor Price/SqFt: \$96.73 Year Built: 1960 Pool: None Encoded Features: 32R2C2S Exterior Stories: 1 # of Interior Levels: 1 Dwelling Type: Single Family - Detached	Approx Lot SqFt: 12,497 / County Assessor Apx Lot Size Range: 10,001 - 12,500 Subdivision: Papago Parkway 6 Tax Municipality: Tempe Marketing Name: Planned Cmty Name: Model: Builder Name: UNK Hun Block: Map Code/Grid: Q37 Bldg Number:
	Ele Sch Dist: 048 - Scottsdale Unified District Elementary School: Tonalea Jr. High School: Supai	High School Dist #: 048 - Scottsdale Unified District High School: Coronado

Cross Streets: SCOTTSDALE ROAD AND MCDOWELL **Directions:** SCOTTSDALE SOUTH OF MCDOWELL TO PAPAGO, WEST TO PROPERTY

Public Remarks: HURRY ON THIS ONE. GREAT OPPORTUNITY FOR INVESTOR OR FIRST TIME HOME BUYERS. UNIQUE SPLIT TWO CARPORT DESIGN. PROFESSIONALLY ADDED STORAGE ROOMS COULD BECOME LIVING SPACES. HUGE 12,000+ SQ FT N/S LOT OFFERS PRIVACY AND MTN VIEWS.

Features	Room Details	Construction & Utilities	County, Tax and Financing
Approx SqFt Range: 1,201 - 1,400 Garage Spaces: 0 Carport Spaces: 2 Total Covered Spaces: 2 Slab Parking Spaces: 2 Pool - Private: No Pool Spa: None Horses: N Fireplace: No Fireplace Property Description: Mountain View(s); North/South Exposure; Adjacent to Wash Landscaping: Grass Front Exterior Features: Covered Patio(s) Add'l Property Use: Other (See Remarks)	Kitchen Features: Range/Oven Elec; Cook Top Elec Master Bathroom: Full Bth Master Bdrm Laundry: Wshr/Dry HookUp Only Dining Area: Eat-in Kitchen; Dining in LR/GR Basement Y/N: N Basement Description: None	Const - Finish: Painted; Brick Trim/Veneer Construction: Block Roofing: Comp Shingle Fencing: Wood; Chain Link Cooling: Refrigeration; Both Refrig & Evap Heating: Electric Heat Utilities: SRP Water: City Water Sewer: Sewer - Public Technology: HighSpd Intrnt Aval Energy/Green Feature: Ceiling Fan(s)	County Code: Maricopa Legal Subdivision: PAPAGO PARKWAY 6 AN: 129-19-074 Lot Number: 939 Town-Range-Section: 1N-4E-3 Cty Bk&Pg: Plat: Taxes/Yr: \$2,551/2011 Ownership: Fee Simple New Financing: Cash; Conventional Total Asum Mnth Pmts: \$0 Down Payment: \$0 Existing 1st Loan: Treat as Free&Clear Existing 1st Ln Trms: Non Assumable Disclosures: Seller Disc Avail; Agency Discl Req Possession: By Agreement

Fees & Homeowner Association Information

HOA Y/N: N //	
HOA 2 Y/N: N //	
HOA 3 Y/N: //	
Association Fee Incl: No Fees Assoc Rules/Info: None	Rec Center Fee Y/N: // Rec Center Fee 2 Y/N: // Land Lease Fee Y/N: / \$0 / PAD Fee Y/N: / \$0 /
	Ttl Mthly Fee Equiv: Cap Imprv/Impact Fee: 0 Cap Impv/Impt Fee 2:

Listing Dates	Pricing and Sale Info	Listing Contract Info
CDOM/ADOM: 29 / 56 Status Change Date: 03/10/2012 Close of Escrow Date: 03/09/2012 Off Market Date: 02/23/2012	List Price: \$145,000 Sold Price: \$130,000 Sold Price/SqFt: \$96.73 Loan Type: Cash Loan Years: 0 Payment Type: Other Buyr Concess to Sell: 0 % Sellr Concess to Buy: 0 % Closing Cost Split: Normal - N	Special Listing Cond: N/A

Listed by: HomeSmart (cr110)

Exhibit “C”

**APPENDIX OF ERRORS
(cataloging and supplementing those cited in petition text)**

Error Location	Author	Error	Petitioners’ Comment in Objection to Error
Staff Report ¹ , p. 1	Staff	Request approval for a “second story balcony on a single-story, single-family house”	Use not applied for; an impossibility (see main text <i>supra</i>)
Staff Report, p. 1	Applicants	Property owner: Kellie and John Nunes	Owner is in fact the Kellie Michele Trust (see <i>supra</i>)
Staff Report, p. 2	Staff	“proposed rooftop balcony would be on top of the addition”	Use applied for is not a rooftop balcony, which is an impossibility (see main text <i>supra</i>)
Staff Report, p. 2	Staff	“The balcony would be visible to residents immediately adjacent to the property, but is screened by vegetation on the neighboring residents’ properties.”	A misrepresentation; no existing vegetation would screen the rooftop deck.
Staff Report, p. 2	Staff	“This request is not for a second story addition of livable space; . . .”	The request is for a second-story addition under the Code ’s definition of <i>second-story</i> recited in the main text. “Livable space” is an undefined and vague formulation.
Staff Report, p. 2	Staff	“ . . . it is for a single story addition with the roof of the addition used as a balcony with a railing.”	Under the Code, it is for a second-story. Using the roof as a balcony is not applied for and is impossible; see above.
Staff Report, p. 2	Staff	“The addition is on the east side of the house.”	The addition is on south side of the house, at its east end.

¹ Citations are to Applicants’ submissions (“Application”), to the Staff Report before the Hearing Officer 10/07/2014 (“Staff Report”), and to the video record of the hearing before Hearing Officer Vanessa McDonald on October 7, 2014, commencing at 1:30 p.m. (“Hearing”)

Staff Report, p. 2	Staff	“ . . . the addition is 141 square feet, with the balcony on the roof of the addition only.”	Applicants’ plans show the <i>deck</i> extending 80% farther north than Staff reports here for the putative “balcony”; plans indicate it goes well <i>beyond</i> the roof of the addition. As before, using the roof as a balcony is not applied for and is impossible.
Staff Report, p. 2	Staff	“The proposed use will not create an increase in vehicular or pedestrian traffic, as it is to be used by the owners of the home.”	This is unsupported. Since no restriction was placed on the Roof Deck during the H.O.’s approval, Staff cannot assert that Applicants will be the exclusive users of the deck. Plans show it will be large enough to hold between 23 and 36 people; more than the two Nuneses will perform increase traffic.
Staff Report, p. 2	Staff	“The balcony is approximately seven feet from the east property line”	No balcony is involved.
Staff Report, p. 2	Staff	“ . . . adjacent to a home with a pool. The neighbor to the east has a large plant that screens direct views to the pool area.”	The statement is misleading; the vegetation to the east screens the view <i>only if the deck is not built</i> . The deck moves the viewpoint upward to ca. 15 feet and ten feet to the south, completely defeating the neighbor’s foliage.
Staff Report, p. 2	Staff, following Applicants	“The residents to the west [<i>i.e., Petitioners</i>] expressed concern regarding views of their yard and pool; the applicant provided photos standing near the location and height of the proposed balcony, illustrating what is visible from the location. . . .”	Applicant deliberately misrepresented the pictures now referred to. Applicants initially supplied to Staff misleading pictures; Petitioners objected that true pictures should be filed; Applicants provided these equally misleading photos.
Staff Report, p. 2	Staff, following Applicants	“The existing screen wall prevents views into the pool area.”	Statement is misleading; the existing wall screens the view <i>only if the deck is not built</i> . The deck moves the viewpoint upward to ca. 15 feet high and ten feet south, defeating the screen wall.

Staff Report, p. 2	Staff	“The applicants are making a significant investment in an older neighborhood, . . .”	The Applicants are making a comparatively trivial investment in the neighborhood and propose to reduce the desirableness of neighboring homes substantially.
Staff Report, p. 2	Staff	“ . . . creating a livable residence . . .”	The subject residence has been occupied continuously since the early ‘60’s, so was presumably livable. The term “livable” should be defined or abandoned; it is not useful if it means “enclosed” here and “comfortable” there.
Staff Report, p. 2	Staff	“ . . . that revitalizes the area.”	Applicants have no such intent; if they so purposed, they would have tended the landscaping these past two years and they would not have proposed to “revitalize” the front yard by pouring concrete over the majority of it.
Staff Report, p. 2	Staff	“ . . . and the balcony is not visible from the street front.”	The eastern-most portion of the deck <i>will</i> be visible from the street. The “balcony” isn’t even visible from the Application.
Staff Report, p. 2	Staff	“There are other residences within the area have second story additions to the south of this lot, in another subdivision.”	This is a misrepresentation; no such home exists to the south of this lot (using “south” in its common sense of between 135 degrees and 225 degrees of the compass). Upon information and belief, the closest home fitting the description, on five times the land of the Property, was designed with a second story and has no second story addition.
Staff Report, p. 2	Staff	“This balcony is not livable space.”	It’s not even a conceivable space, is the real point, and it’s certainly not applied-for space.
Staff Report, p. 3	Staff	“ . . . the addition is single story, and uses the roof top for a balcony.”	It does no such impossible thing.
Staff Report, p. 3	Staff	“The balcony is approximately twelve feet to the top of the railing and 9 foot roof top standing surface. The proposed balcony is compatible with surrounding structures and uses.”	It is neither a balcony and is absolutely <i>not</i> compatible with surrounding structures and uses. No second-story uses, whether real or fictive like the balcony, exist in Papago Parkway 6.

Staff Report, p. 3	Staff	<p>“The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code.”</p>	<p>This assertion, if it is assertion and not just recitation, Petitioners have refuted <i>supra</i>. Detriment to adjacent property and persons residing in the vicinity is inherent in the proposed roof deck.</p>
Staff Report, p. 3	Staff, following Applicant	<p>“Based on the information provided by the applicant . . .”</p>	<p>Much of the information provided by the Applicants shows a blatant, even deliberate disregard for the truth, as is asserted <i>passim</i> and is readily demonstrable at an evidentiary hearing. Analysis by Staff must go beyond the Applicants’ statements.</p>
Staff Report, p. 3	Staff	<p>“ . . . and the above analysis, staff recommends approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.”</p>	<p>Decidedly little attention to the Application, let alone probing analysis, was given if Staff was literally nowhere capable of naming the <i>topic</i> of the project correctly twice running. Staff also did not establish whether the Applicants were parties legally entitled to file the Application, the logical prologue to even opening a file on the matter. Staff’s analysis of the Application is manifestly ill-thought and neglectful.</p>
Letter of Explanation	Applicants	<p>“The deck . . . will NOT be visible from the street, . . .”</p>	<p>This is a misrepresentation. Portions of the deck will be visible from the street, as may occupants be, too.</p>
Letter of Explanation	Applicants	<p>“ . . . the deck will NOT cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions”</p>	<p>This is incorrect as to noise. On the occasions that Applicants have taken chairs up to the roof of the house, on July 4, of consecutive years, neighbors have been conscious of their speaking on the rooftop.</p>

Letter of Explanation	Applicants	“The deck will blend in beautifully with the neighborhood and its surroundings.”	The deck will in fact stick out like a sore thumb; the neighborhood contains no second-story uses anywhere, which is why Applicants reached deep into the Campo Allegre development. In that dissimilar group of homes, unlike the instant case, all second stories stand at a great distance from neighbors and are nearly completely masked by foliage. The Commission can readily take evidence on this point.
Letter of Explanation	Applicants	“We have sent out (today) the attached letter to our immediate neighbors informing them of the plans and we’ll be meeting with these same neighbors on Saturday, August 16 th as a courtesy.”	The letter of August 18 was dated August 14, the same as the Letter of Explanation, but is postmarked four days later. Bruce Martell has stated that he did talk with John Nunes on the street at some point in August, but does not recall the date. In any case, Petitioners and Ms. Enright – the immediate neighbor on the south – were not invited to any meeting. Perhaps Applicants also knew that it could not be other than pointless, as occurring <i>after</i> the plans were filed. Staff and the H.O. erred to interpret the single contact with Mr. Martell as fully signifying abundant communication with neighbors.
Letter to Neighbors of August 18, 2014	Applicants	The letter to neighbors dated August 14, 2014 by Applicants was in fact postmarked August 18, 2014. The Nuneses filed their use permit application August 14, well before neighbor comment was solicited.	This letter has been exhibited repeatedly by Staff and the Hearing Officer as proof of the Nuneses being “proactive” in communicating with neighbors. In fact, the Nuneses had filed their plans four days prior. The letter shows less proactiveness in communicating with neighbors than Austria-Hungary showed Serbia in July 1914 – about 34 days less.
Letter to Neighbors of August 18, 2014	Applicants	Absence of mailing certificate.	No record in the file indicates to whom the Nuneses mailed the letter of August 18. Because Staff and the H.O. made much of the apparent communication with neighbors, it would be helpful to know the recipients.

Letter to Neighbors of August 18, 2014	Applicants	“The deck will not be visible from the street”	This is a misrepresentation. <i>A portion of the deck will be visible from the street, as may occupants.</i>
Letter to Neighbors of August 18, 2014	Applicants	“ . . . and is simply intended to better enjoy [sic] the beautiful view of the Papago Buttes and the occasional long horn sheep.”	The Papago Buttes are readily visible from ground level at the Property without erection of any decks; the buttes are considerably elevated above grade. If the Nuneses had spent much time in the neighborhood, this may have become apparent. (Obviously, the Nuneses will have a long wait to see any “long horn sheep” on the buttes.)
Streetscape (remodel) (Staff rept. att. 12)	Applicants	The streetscape preferred by Applicants is mostly concrete.	Staff has indicated the concreted front yard is unacceptable, but Petitioners and the Commission are entitled to draw aesthetic conclusions from its being proposed. Far from seeking to “revitalize” the neighborhood, they prefer to put up a parking lot.
West-facing photos (Staff rept. att. 13)	Applicants	This photo is taken from the existing roof of the Property, not, as the Applicants represent, “the South Western [sic] edge of the deck facing West.” This deceptive picture was submitted in replacement of an even more deceptive view.	The actual view from the southern- and westernmost point of the proposed deck, at elevation, will reveal Petitioners’ spa and the shallow half of Petitioners’ pool at <i>water level</i> ; anyone in the Petitioners’ back yard or in the pool area would be much more visible. An accurate photo must be taken at least 10 feet south of the instant one, as was pointed out in Petitioners’ “Opposition” below.
East-facing photo (Staff rept. att. 14)	Applicants	As with the west-facing, this photo is taken from the existing roof of the Property, not, as the Applicants represent, “the South Western [sic] edge of the deck.”	The picture is deceptive in the same manner as the last-named. An actual view from the southern- and westernmost point of the deck, at elevation, will reveal the eastside neighbor’s pool area entirely. An accurate photo must be taken at least 10 feet south of the instant one.
South-facing photo (Staff rept. att. 15)	Applicants	As with the prior two, this photo is made from the existing roof, not “the South Western [sic] edge of the deck.”	The Commission should note there is no two-story house to the south in Applicants’ own photo.

<p>“Neighbors to the South East with 2 stories” photo, (Staff rept. att. 16)</p>	<p>Applicants</p>	<p>The two-story house in the photo is in the left-hand one-fifth of the photo, not in its center. The photo is taken with magnification.</p>	<p>The photo suggests a nearby two-story house; the house in the foreground is of one story. The house in the far left background is of two stories, at a distance of more than 660 feet, in a subdivision (Campo Alegre) of very different composition, and cannot be seen from the Property at ground level.</p>
<p>“Neighbors to the South West with 2 stories” photo, (Staff rept. att. 16)</p>	<p>Applicants</p>	<p>This photo has been taken with great magnification and looking over nearly the entirety of the intervening yards.</p>	<p>The photo is just deceptive. The Turner house in the photo is 350 feet distant, though the magnification makes it appear nearly as close as Petitioners’ 10 feet away. The house is in a subdivision (Campo Alegre) of very different composition and construction, planted on the far end of 1.32 acres with intervening desert area heavy with mature native trees. By no means does the Turner house correlate to the Property; see main text.</p>
<p>Hearing of October 7, 2014, 1:30 p.m.²</p>	<p>H.O.</p>	<p>“This brings us to agenda item number 2, which is a request for approval for a use permit to allow the addition of a second story balcony on a single story [garbled]. . . .”</p>	<p>The Application numbered ZUP14103 makes no mention of a balcony.</p>
<p>Hearing of October 7, 2014, 1:30 p.m.</p>	<p>Ms. Kaminski</p>	<p>“The property is . . . adjacent to the Salt River Project PERA Club site and some larger lots to the south of the property.”</p>	<p>The property is several hundred feet from the Pera Club property.</p>
<p>Hearing of October 7, 2014, 1:30 p.m.</p>	<p>Ms. Kaminski</p>	<p>“The applicants requested to put in a single-story addition to the west side . . . excuse me, to the east side of their house – I’m looking for the maps that would show that better. Right here in this location on the southeastern corner of their property.”</p>	<p>The proposed addition would be at the east end of the south side of the house. It is not on the southeastern corner of the Property.</p>

² Petitioners’ transcription of the hearing is informational, not official. As the Commission is well aware, the requirement of the zoning code is that we, anything that is above the ground level requires a use permit for a second-story addition although it’s not considered livable space. It’s not really a second-story addition; it is outside space. Ware, the full hearing is available for view on the City’s website.

<p>Hearing of October 7, 2014, 1:30 p.m.</p>	<p>Ms. Kaminski</p>	<p>“It’s a single-story addition and they’d like to use the roof of that addition as an outside deck or a balcony.”</p>	<p>Applicants applied for an outside deck; it is unknown when they elected to convert the use to a balcony. No plans have been submitted showing a balcony.</p>
<p>Hearing of October 7, 2014, 1:30 p.m.</p>	<p>Ms. Kaminski</p>	<p>“The requirement of the zoning code is that we, anything that is above the ground level require a use permit for a second-story addition although it’s not considered livable space. It’s not really a second-story addition; it is outside space.”</p>	<p>“Livable space” is an undefined and meaningless term. Under the Code’s definition the proposed deck is a second-story use; its being outside or inside is immaterial.</p>
<p>Hearing of October 7, 2014, 1:30 p.m.</p>	<p>Exchange between H.O. and Ms. Kaminski</p>	<p>H.O.: So, just for clarification, the addition – I’m looking in my packet at attachment number eight – the addition is the squarish building right . . .</p> <p>D. Kaminski: . . . 141 square feet.</p> <p>H.O.: . . . but the deck actually extends to the opposite side of the house, correct?</p> <p>D. Kaminski: There is this portion right here, where it says . . .</p> <p>H.O.: Go to the other drawing. See where it says “new deck”? With the arrow?</p> <p>D. Kaminski: That’s the roof decking; that’s not the, that’s not the . . .</p> <p>H.O.: So that is not the deck. The deck is only that side part . . .</p> <p>D. Kaminski: . . . yes . . .</p> <p>H.O.: . . . only on top of the proposed . . .</p> <p>D. Kaminski: . . . stairs . . .</p> <p>H.O.: . . . structure . . .</p> <p>D. Kaminski: . . . They have stairs with a railing around this portion . . .</p> <p>H.O.: Okay.</p> <p>D. Kaminski: . . . for access to just that portion.</p> <p>H.O.: Got it.</p>	<p>Petitioner believes the H.O. misapprehends the deck’s size as a result of this exchange, as becomes clear in the closing minutes of the hearing.</p>

Hearing of October 7, 2014, 1:30 p.m.	Ms. Kaminski	“In looking at the criteria for a use permit – in this case it’s a use permit to allow a structure – we did feel that it met the test for a use permit to allow the balcony on the top of the first floor.”	A balcony on top of a first floor is an impossibility; balconies adhere to and extend from walls.
Hearing of October 7, 2014, 1:30 p.m.	Ms. Kaminski	“Lastly, condition five we are proposing to remove, and they’re [gesturing to applicants] not aware of this yet, but it’s really related more to a use where you would have a use that might over time require reevaluation and in this case it’s a structure, so once it’s been built it would be hard to reevaluate that structure.”	Petitioners seek relief from the removal of this “subsequent review” condition. Applicants are well aware that the proposed deck may be found in the future to be great offense not just to the adjacent properties but to the whole neighborhood; presumably there is a reason second-story structures are deed restricted in Papago Parkway 6.
Hearing of October 7, 2014, 1:30 p.m.	H.O.	“... but when I was looking at the case I looked up in our code the definition of a single story, or a second story is any floor level that’s above the ground or main floor except mezzanines, so we have that exception in our code for what we call a mezzanine, which obviously says, ‘Okay, let’s go look up the definition of a mezzanine,’ and a mezzanine is an intermediate building story that projects in the form of a balcony or a deck, so what we’re talking about here in my view and I think it’s yours [gesturing to Ms. Kaminski] as well is it’s not so much as a single story -- or a second story -- as it is an intermediate story as defined in the code.”	Under the Code, the applied-for second story deck is a second story. No such thing as an outdoor mezzanine exists. A mezzanine is <i>always</i> an intermediate story because it is <i>always between</i> two stories. If there is no story above a mezzanine, it is not an intermediate story and it is not a mezzanine. An outdoor mezzanine is as impossible as a rooftop balcony. Petitioners have <i>no</i> idea why the ensuing discussion of mezzanine occurs, nor why so many parties accept this is a mezzanine application as a prelude to the H.O.’s concluding that it’s a <i>balcony</i> .
Hearing of October 7, 2014, 1:30 p.m.	Ms. Kaminski	“Yeah, and the use permit to allow the balcony falls under the definition of the use permit for a second-story addition to a single-story house, but it is more of a mezzanine in that it’s outdoor space it’s not livable interior space.”	Under the Code, the applied-for second story deck is a second story. No such thing as an outdoor mezzanine exists. A mezzanine is <i>always</i> an intermediate story because it is <i>always between</i> two stories. If there is no story above a mezzanine, it cannot be intermediate, and it cannot be a mezzanine.

Hearing of October 7, 2014, 1:30 p.m	H.O.	“And the purpose for being here is because we still, because the City thinks that it’s worthwhile to go through the notification process and let neighbors know when a change is coming.” “Yes, yes; so that it would be for what they’ve proposed is not that it could not be converted later to livable space.”	The H.O. announces by implication her concurrence with staff, that the Application was not <i>necessary</i> , but only <i>thought to be worthwhile</i> for the grant of the second story use permit (as recharacterized). “Livable space” is an undefined, loose term.
Hearing of October 7, 2014, 1:30 p.m	H.O.	“... what was talked about already I think is pretty clear, and just to elaborate on that mezzanine level, I did want to indicate that the roof that the roof deck is going to be situated on measures at nine feet, and typically a single...”	Ms. Costello elaborates that the mezzanine level is a roof deck.
Hearing of October 7, 2014, 1:30 p.m	Claire Costello, Applicants’ representative	“So that if a six-foot person is on that nine-foot roof, you know, that still is within the single story . . . so it’s just kind of to bring that up, but it sounds like everybody’s kind of understanding that it really isn’t a second story. I thought maybe that created a little bit of confusion.”	The assertion is ambiguous. The point appears to be that if a six-foot-tall individual stands on a nine-foot second story, it’s the same as if a 15-foot-tall person stood on a main-floor single story, so clearly the roof deck really isn’t a second-story.
Hearing of October 7, 2014, 1:30 p.m	Ms. Costello	“H.O.: Because . . . just a quick question, or no . . . this is the R1-6 zoning district, and a single-story home could be 30 feet tall, correct? [gesturing to staff] D. Kaminski: That is correct. H.O.: So actually if this applicant wanted to tear down this house and rebuild it, it could be a 30-foot . . . C. Costello: . . . tall . . . H.O.: . . . yeah, a 30-foot tall structure. So these are really rather low-slung . . . C. Costello: . . . yeah . . . H.O.: . . . buildings in this neighborhood.	Ms. Costello, Ms. Kaminski, and the H.O. agree that “these are rather low-slung” buildings in this neighborhood. This suggests a second-story use, one that is higher, departs from the character of the homes. Parenthetically, the height of any first floor structure is obviously of no relevance to the use permit.

Hearing of October 7, 2014, 1:30 p.m	Ms. Costello	“The deck is . . . in the rear; you can’t see it from the street, , especially with the pitched elevation of the main house being intact.”	Portions of the deck, and occupants, will be visible from the street.
Hearing of October 7, 2014, 1:30 p.m	Ms. Costello	“So it really limits any view that you would have to anybody on the north side of the house, which is the large majority of that subdivision. Of course you do still have a neighbor to either side of you . . . and we did consider that as well very early on in the design process. When we first met Kellie and John they actually talked about doing their addition on the western side and we saw that, you know, that probably wasn’t the best placement for this because we did look at the surrounding neighborhoods and wanted to kind of get further away from where the neighbors would be. We did see pool locations and things like that from the aerial imaging so we came up with that addition on the east side to really kind of keep that context and that consideration in mind. In addition with all of that, the addition really doesn’t protrude that far out from the existing house as far as seeing to that subdivision to the south further . . . closer to the Papago Buttes.	Much of this is misleading. The deck is located as near the east neighbors now as it could be the west neighbors if not moved. Applicants are aware of boundary issues on the west lot line; a document reflecting this was submitted in the staff report. The deck protrudes very far out from the standpoint of neighbors’ pools, the Applicants have simply preferred not to take photos from the relevant point.

<p>Hearing of October 7, 2014, 1:30 p.m</p>	<p>H.O.</p>	<p>“Also, just to touch on one thing and then I’ll get to you (gesturing) is when you talked about precedent, anyone within that neighborhood, they would still have to come back in to the, to get a use permit; they couldn’t then just say, ‘Oh, well they got it, therefore we’re entitled to it.’ That’s not the way it works; it’s not like the court system where typically you just say, ‘Okay, it’s precedent, he’s been established.’ Each individual case would have to come back in and on its own merits be weighed whether it was an appropriate use or not. So I just wanted to let you know that as well.”</p>	<p>Petitioners are pleased to learn the H.O. does not set precedent. Notwithstanding, it is clear that allowance of one disparate use establish a disparate use in the neighborhood, and that nearby residences gain thereby a superior arguing position that they, too, should be granted the use: now it exists in “surrounding structures”.</p>
<p>Hearing of October 7, 2014, 1:30 p.m</p>	<p>Ms. Costello</p>	<p>“So, really, as far as the different perspectives of course that a perspective totally opposed to where the Nuneses’ perspective is . . . of their site, the . . . We believe John’s images that he took on site are very appropriate to where the property is and you were correct in the shed being kind of at the far end of the shed is where the addition will be, probably just 10 feet out, but really with that height the photos clearly show that’s unclear sight and the images and the view into their pool is not there.</p> <p>“So what I’m going to do is go through the criteria. As you probably all know there is use permit criteria outlined in the code and that’s what I have to look at and how I have to evaluate a use permit that comes before me.”</p>	<p>Applicants’ photos are <i>not</i> taken from the south-most extent of the deck; they do not show that the view east and west downward into the pools “is not there” in Ms. Costello’s parlance.</p>
<p>Hearing of October 7, 2014, 1:30 p.m</p>	<p>H.O.</p>	<p>“So what I’m going to do is go through the criteria. As you probably all know there is use permit criteria outlined in the code and that’s what I have to look at and how I have to evaluate a use permit that comes before me.”</p>	<p>One criterion the H.O. overlooks is “a finding by the decision-making body that the use covered by the permit, the manner of its conduct, and any building which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or, or to the public welfare in general” pursuant to Code Section 6-308(E)(1).</p>

Hearing of October 7, 2014, 1:30 p.m	H.O.	<p>“So the first criteria is if I believe that this project will create a significant increase in vehicular or pedestrian traffic. I don’t believe that to be the case; this is purely for the enjoyment of the property owners. It’s a tiny little deck; it’s 141 square feet so it’s not like you even have the opportunity to invite many guests over. You know, it’s pretty small.”</p> <p>“The second criteria is do I believe that this will create a nuisance arising from the admission [<i>sic</i>] of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. ‘Ambient conditions’ in this case would be defined as normal conversation being held in a back yard. I don’t believe that just because they would be up at nine feet that, you know, that would create a nuisance in terms of noise, and the others, odor, dust, gas, noise, vibration don’t even apply.”</p>	<p>As cited above, the H.O. misapprehends the size of the proposed deck. It is closer to 241 square feet.</p>
Hearing of October 7, 2014, 1:30 p.m	H.O.	<p>“Do I believe this will contribute to the deterioration of the neighborhood or downgrade property values? I don’t believe that to be the case; I think they’re making a significant investment in this neighborhood which is always a good thing.”</p> <p>“The next one is, do I believe it’s compatible with existing surroundings, structures, and uses? I believe so; there are second-story homes to the south,”</p> <p>“ . . . and this isn’t even a second story; it’s, as the code defines it, an intermediate level, so I believe that it is compatible with this neighborhood”</p>	<p>The H.O. took no evidence in point of nuisances and cannot opine about them. The south side of Papago Drive is a very quiet neighborhood; nearly any sound pronounced from a height of 14 to 15 feet will be audible several houses away.</p>
Hearing of October 7, 2014, 1:30 p.m	H.O.	<p>“Do I believe this will contribute to the deterioration of the neighborhood or downgrade property values? I don’t believe that to be the case; I think they’re making a significant investment in this neighborhood which is always a good thing.”</p>	<p>This has been refuted in the main text of this petition.</p>
Hearing of October 7, 2014, 1:30 p.m	H.O.	<p>“The next one is, do I believe it’s compatible with existing surroundings, structures, and uses? I believe so; there are second-story homes to the south,”</p> <p>“ . . . and this isn’t even a second story; it’s, as the code defines it, an intermediate level, so I believe that it is compatible with this neighborhood”</p>	<p>There are no second-story homes to the south within any meaningful distance. The proposed use is wholly dissimilar to the surrounding properties.</p>
Hearing of October 7, 2014, 1:30 p.m	H.O.	<p>“ . . . and this isn’t even a second story; it’s, as the code defines it, an intermediate level, so I believe that it is compatible with this neighborhood”</p>	<p>The proposed use is a second-story under the Code.</p>

<p>Hearing of October 7, 2014, 1:30 p.m</p>	<p>H.O.</p>	<p>“As I mentioned before, it’s a tiny little roof deck; when I read this I view it as kind of like ‘pour yourself a glass of wine and go upstairs and watch the sunset,’ you know, and pretty much not much more than that can take place up here.”</p>	<p>The deck space would accommodate 24 or so First-Class airplane passengers if on a Boeing 737-800.</p>
<p>Hearing of October 7, 2014, 1:30 p.m</p>	<p>H.O.</p>	<p>“So I believe that it meets the criteria for a use permit, so I’m going to grant the use permit application ZUP14103, the use permit to allow the second-story balcony on a single-family residence.”</p>	<p>No balcony use was applied for; the grant here is not permitted under the Code, or indeed the laws of the State of Arizona.</p>



DEVELOPMENT PROJECT FILE

for

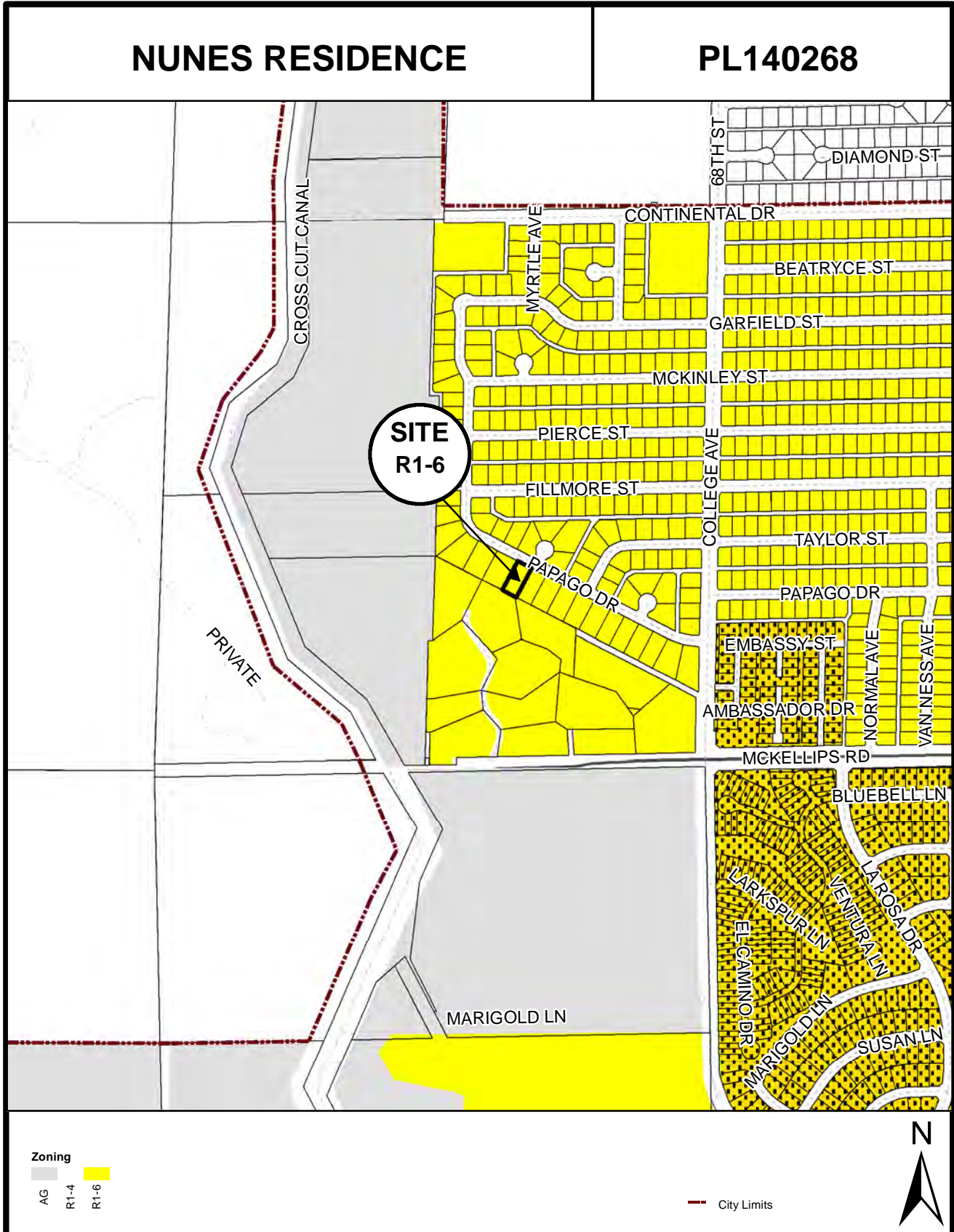
NUNES RESIDENCE

ATTACHMENTS:

1. Location Map
2. Aerial Photo
3. Letter of Intent
4. Letter submitted to residents by applicant
- 5-6. Aerials provided by applicant for context
- 7-8. Site Plans
9. Close up of Addition
10. View diagrams
11. Elevations and Section
12. Street front view of existing and proposed home improvements
- 13-16. Site Photos
17. Photo Rendering of Addition
18. Sample of lighting for balcony
- 19-23. Agreement respecting wall construction; preservation of rights and titles of parties.
- 24-25. Public Input

NUNES RESIDENCE

PL140268



Location Map

NUNES RESIDENCE

PL140268



Aerial Map

LETTER OF EXPLANATION for use permit

August 14, 2014

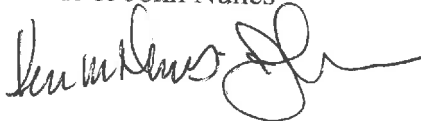
This letter is to request a Use Permit for the ability to add a low profile deck (12'4" x 19'6") to the rear (South East) portion of 35 E Papago Drive, Tempe as part of a major renovation.

- The deck will allow us to enjoy the beauty of the Papago Buttes to the South (see attached photo), and
- The deck will have muted inward facing safety lighting. Lighting will not be visible to the outside (see attached photo), and
- The deck will have a patio table and chairs, and
- The deck will be located well within the setback of the property to the East (41 E Papago Drive) and will NOT be visible from the street, and
- The deck will NOT cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions, and
- The deck will NOT contribute to the deterioration of the neighborhood or be in conflict with goals, objectives and policies of the City. In fact, as part of the major remodeling, the proposed Deck will enhance the surrounding properties value, and
- The deck will be compatible with existing surrounding structures, and
- The deck will NOT result in any disruptive behavior, which may create a nuisance to the surrounding area or general public, and
- The deck will be part of the major remodeling. The deck will blend in beautifully with the neighborhood and its surroundings.

We have sent out (today) the attached letter to our immediate neighbors informing them of our plans and we'll be meeting with these same neighbors on Saturday, August 16th as a courtesy.

We thank you for your consideration.

Kellie & John Nunes



35 E Papago Drive
Tempe, AZ 85281

John & Kellie Nunes

35 E Papago Drive • Tempe, AZ 85281 • Phone: 954.707.7138

August 14, 2014

Bruce and Linda Martell
34 E Papago Drive
Tempe, AZ 85281

Dear Bruce and Linda:

A bit over two years ago while driving through the area, we fell in love with this neighborhood. After a brief search, we purchased the home at 35 E Papago Drive in March 2012. We knew from the beginning that it would take lots of work and TLC to bring it up to the vision we had for our retirement home, but it surely seemed worth the investment.

Over the past eighteen months we've spent considerable time and energy with architects, designers, mechanical, structural, plumbing and electrical engineers and have come up with a set of construction documents detailing our remodeling plans. We're finally ready to start the permitting process with the City of Tempe in order to get the construction phase underway. As part of the permitting process, we will be asking the City of Tempe to grant us a Use Permit to add a low profile deck on the South East (rear) part of the house. The deck will not be visible from the street and is simply intended to better enjoy the beautiful view of the Papago Buttes and the occasional long horn sheep.

We expect that construction will start within the next two months and will be completed by the end of the year. We plan to make this our permanent home in early 2015.

We'd be glad to discuss the project with you if you have any questions or concerns.

Sincerely,



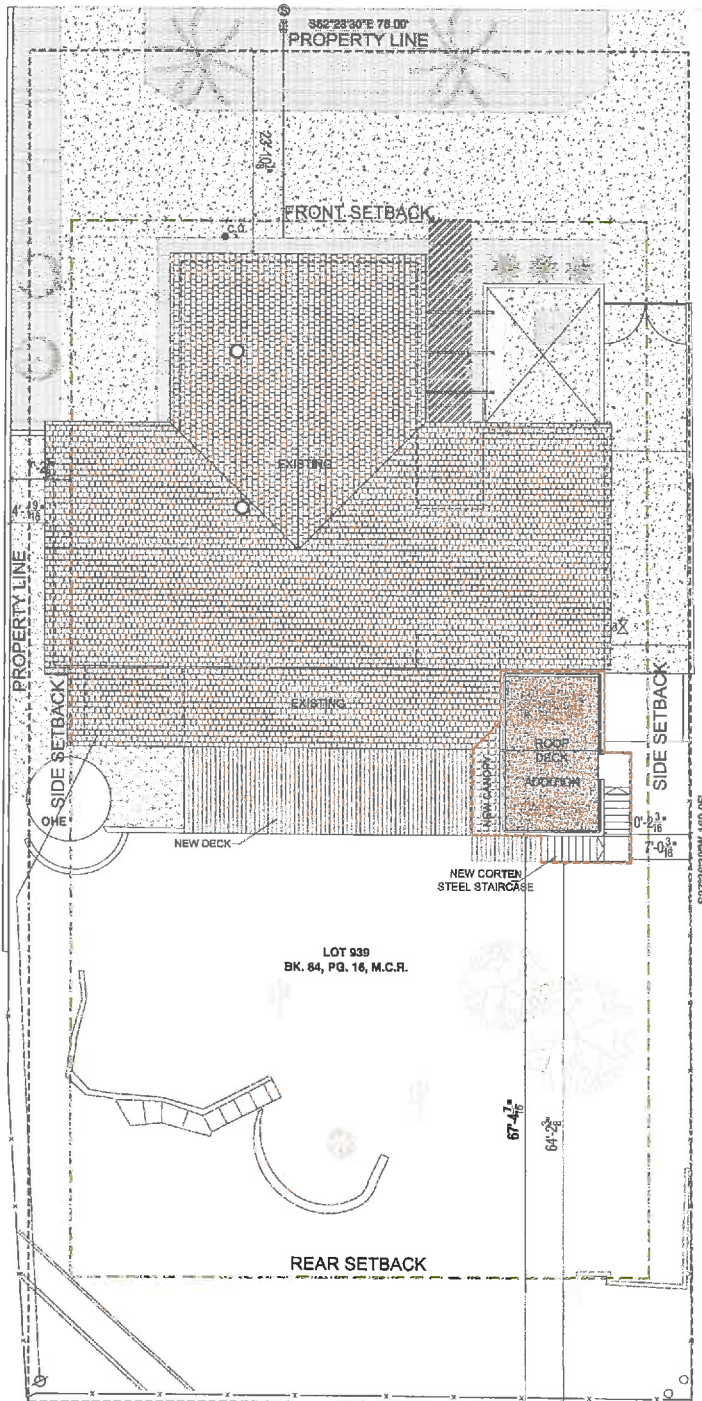
John & Kellie



35 E Papago Drive, Tempe AZ 85281
Surrounding neighborhood



35 E Papago Drive, Tempe AZ 85281



SITE PLAN LEGEND

- ADDITION
- PROPERTY LINE
- SETBACKS
- EXISTING SHINGLES TO REMAIN
- NEW CANOPY TO MATCH EXISTING SHINGLES
- NEW DECK WITH TREX DECK COMPOSITE
- NEW WALKING DECK
- 3000 PSI SMOOTH CONCRETE WALKWAY
- 3000 PSI CONCRETE SLAB EARTH COLORED
- PEA GRAVEL
- DECOMPOSED GRANITE

PROJECT DATA

Parcel #: 129 19 074
 Subdivision: Papago Parkway 6
 Lot #: 939
 Zoning District: R1-6
 Site Area: Gross: 12497 SF
 Setbacks required: Front: 20 SF, Rear: 15 FT, Side: 5 FT
 Setbacks requested: Rear: 64 FT 2", Side: 7 FT
 Street R/W: 25 FT
 Existing house area: 1487 SF
 Proposed Addition: 141.26 SF

The Ranch Mine, LLC
 3525 E Amelia Avenue
 Phoenix, AZ 85018

602.571.3016
 info@theranchmine.com
 www.theranchmine.com

Kellie & John Nunes
Papago
 35 E Papago Drive
 Tempe, AZ 85281

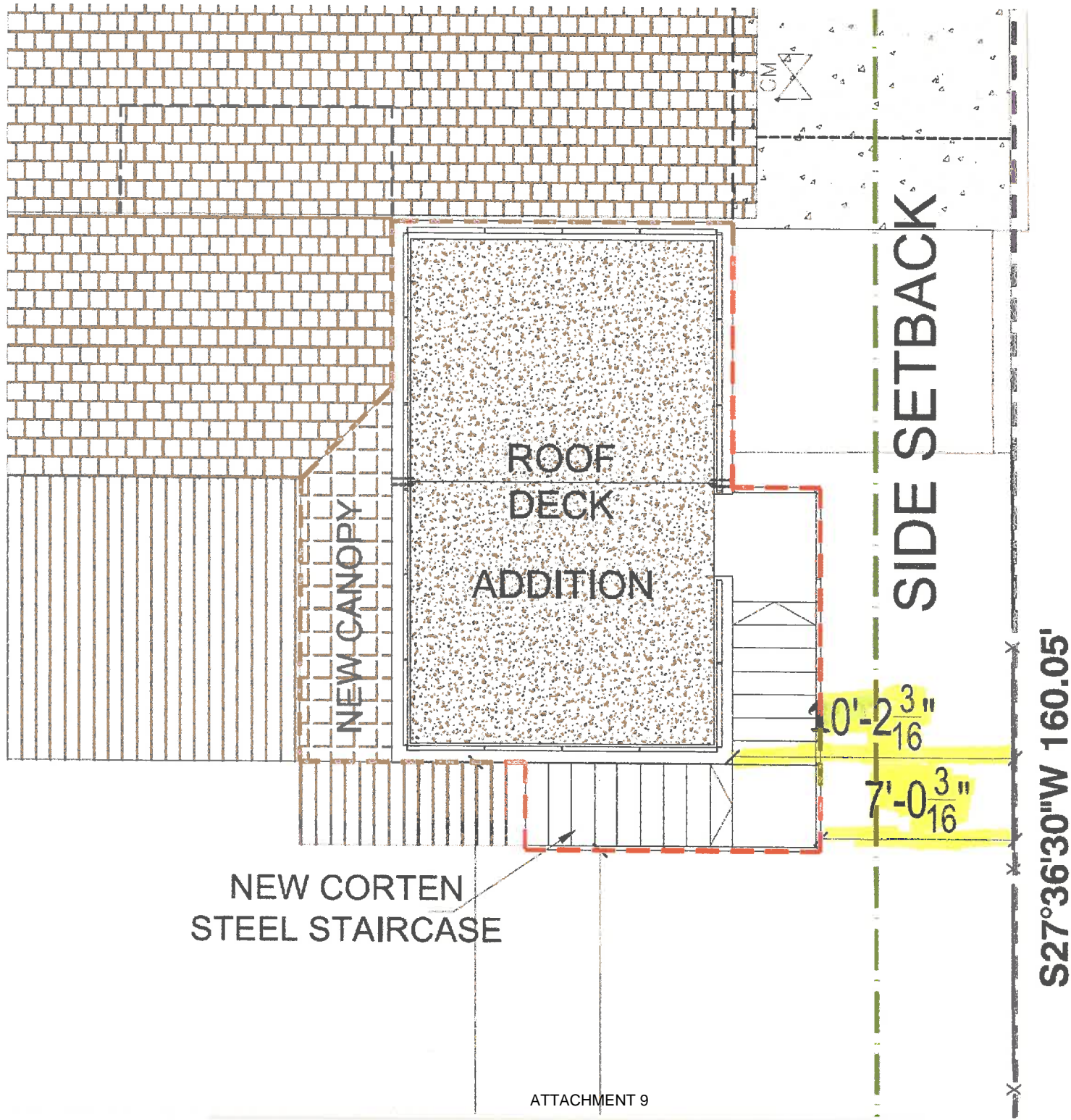
date of issue:
08.08.2014

sheet contents:
Addition Site Plan

sheet no:

ADDITION SITE PLAN **N**
 SCALE: 1/21"=1'-0"

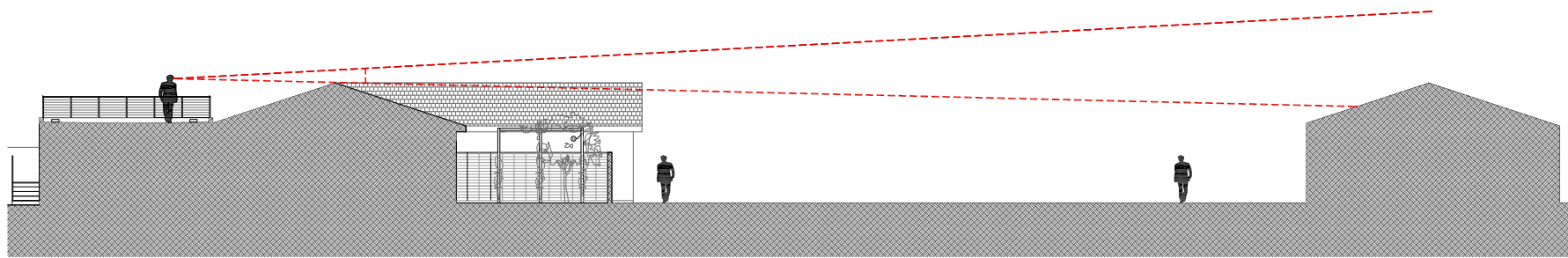
A-1



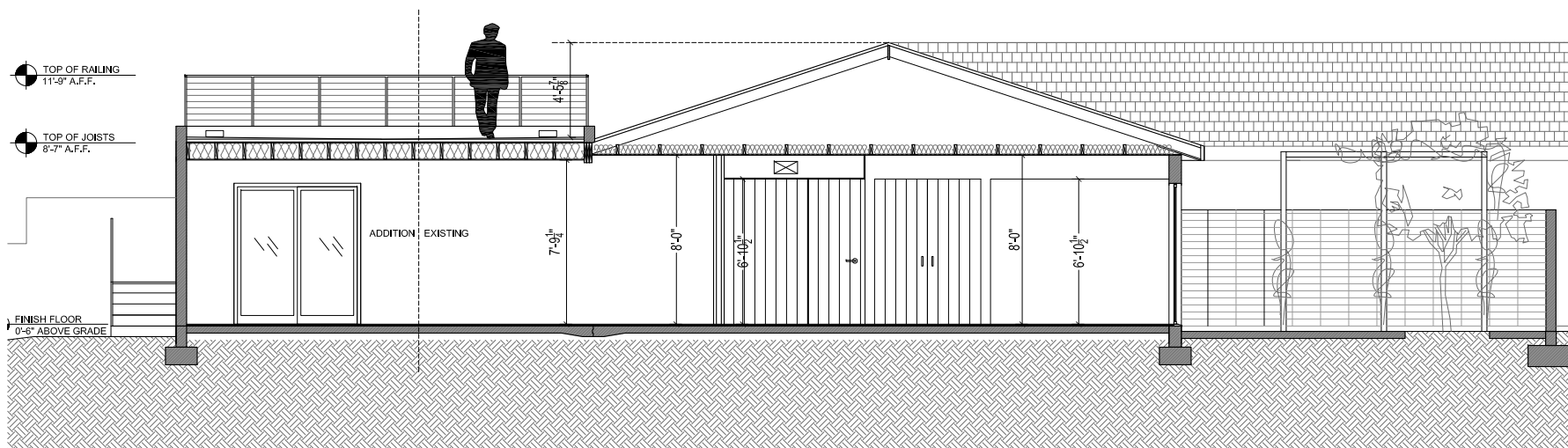
The Ranch Mine, LLC
3525 E Amelia Avenue
Phoenix, AZ 85018

602.571.3016
info@theranchmine.com
www.theranchmine.com

Kellie & John Nunes
Papago
35 E Papago Drive
Tempe, AZ 85281



NORTH VIEWS SIMULATION 



BUILDING SECTION 

date of issue:
09.25.2014

sheet contents:
Elevation Site Plan

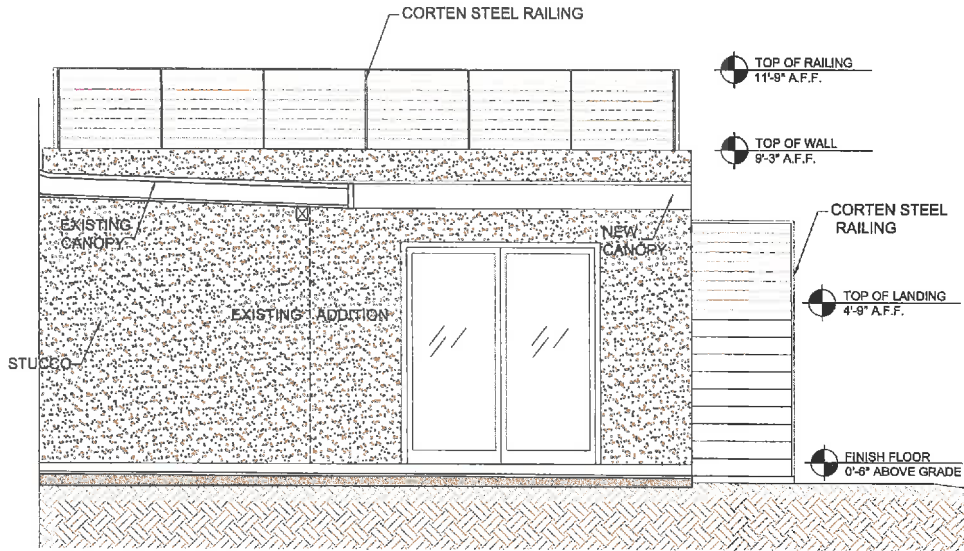
sheet no:

A-5

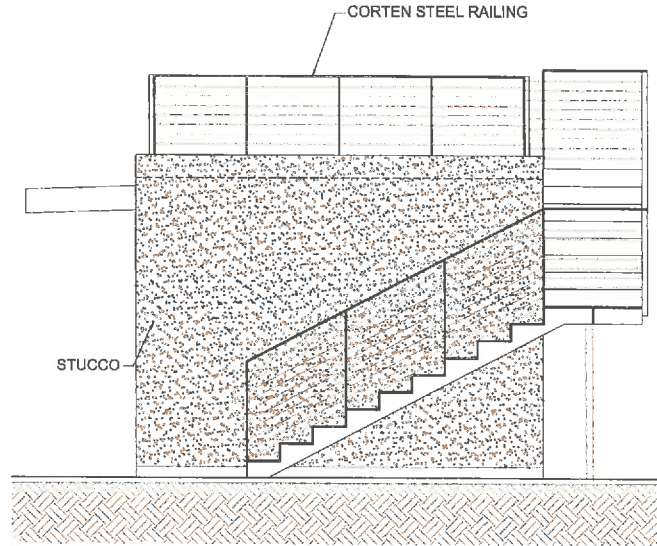
The Ranch Mine, LLC
 3525 E Amelia Avenue
 Phoenix, AZ 85018

602.571.3016
 info@theranchmine.com
 www.theranchmine.com

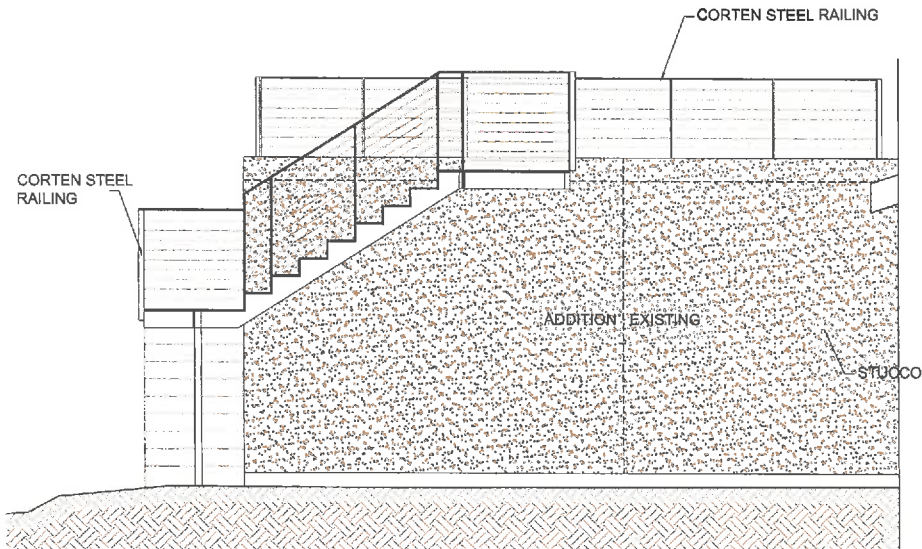
Kellie & John Nunes
Papago
 35 E Papago Drive
 Tempe, AZ 85281



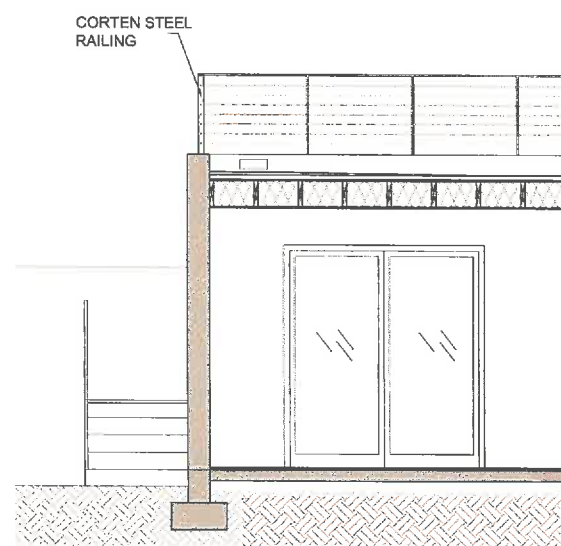
1 WEST ELEVATION
 SCALE: 3/16"=1'-0"



2 SOUTH ELEVATION
 SCALE: 3/16"=1'-0"



3 EAST ELEVATION
 SCALE: 3/16"=1'-0"



4 SECTION
 SCALE: 3/16"=1'-0"

date of issue:
08.08.2014

sheet contents:
Elevations

sheet no:

A-2



Streetscape (existing)



Streetscape (remodel)



On the South Western edge of the deck facing West. Camera lens is at 5'8' above deck flooring (wide angle) Pool is NOT visible



On the South Western edge of the deck facing West. Camera lens is at 5'8' above deck flooring (close-up angle) Pool is NOT visible



On the South Western edge of the deck facing North. Camera lens is at 5'8" above deck flooring. Street is NOT visible.



On the South Western edge of the deck facing East. Camera lens is at 5'8" above deck flooring.



On the South Western edge of the deck facing South. Camera lens is at 5'8' above deck flooring..



Neighbors to the South East with 2 stories



Neighbors to the South West with 2 stories

The Ranch Mine, LLC
3525 E Amelia Avenue
Phoenix, AZ 85018

602.571.3016
info@theranchmine.com
www.theranchmine.com

Kellie & John Nunes
Papago
35 E Papago Drive
Tempe, AZ 85281

date of issue:
08.08.2014

sheet contents:
Renderings

sheet no:

A-4





Muted inward facing deck lighting for safety purposes

When recorded return to:
Geoff Manoil
29 E. Papago Drive
Tempe, AZ 85281

2

1 OF 1

TOMUTAC

AGREEMENT RESPECTING WALL CONSTRUCTION; PRESERVATION OF RIGHTS AND TITLES OF PARTIES

This agreement between Kathleen K. Curtis ("Curtis") on the one hand and Geoffrey B. Manoil and Dawne L. Walczak ("Manoil-Walczak") (the "Parties"). Curtis is owner of the property at 35 East Papago Drive, Tempe, described as Lot 939 in the plat of Papago Parkway No. 6 as recorded in the official records of Maricopa County, Arizona (the "Curtis Property"); Manoil-Walczak own the property at 29 East Papago Drive, Tempe, described as Lot 940 in the plat of Papago Parkway No. 6 of said records (the "Manoil-Walczak Property") (together, the Curtis Property and the Manoil-Walczak Property are the "Properties"). Curtis and Manoil-Walczak each make this letter agreement on behalf of themselves as the "Parties," which shall be held to include and bind their respective successors, heirs, or assigns of their interests in the Properties.

Curtis has elected to construct and Manoil-Walczak have elected to permit construction of portions of a concrete wall on the Manoil-Walczak Property (the "Wall") running approximately east-west and positioned roughly adjacent to the northern edge of the existing west-side covered carport on the Curtis Property.

The Parties intend and agree that the legally recorded land titles of the respective Properties shall suffer no color, cloud or alteration because of the construction of the Wall. The Parties agree further that the boundary between the Properties is as recorded in the Official Records of Maricopa County, Arizona, and that neither party presently makes claim nor will make claim either of encroachment or of right to the deeded property of the other as a result of the Wall or other existing construction. The title-holder of either Property shall retain his or her exclusive legal rights with respect to any portion of his or her respective parcel.

Curtis warrants to Manoil-Walczak that the Wall will comply with all applicable land-use requirements of governmental entities, including without limitation Tempe ordinances, any codes, covenants and restrictions applicable to the Properties, and requirements and specifications for type and style of building of such an improvement. Curtis agrees to indemnify and hold harmless Manoil-Walczak against any charges, fees, or damages of any kind associated with or arising from the construction of the Wall.

It is the explicit intent of this letter agreement to preserve the rights of either party under Arizona law, and to ensure no dispute shall arise or occur between

KKC

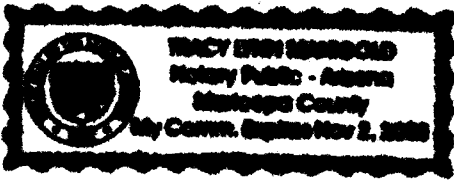
State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 28th day of October 2005
GEOFFREY B. MANOIL.

Tracy Lynn Smerciak

Notary Public

My commission expires:



State of Arizona)
) ss.
County of Maricopa)

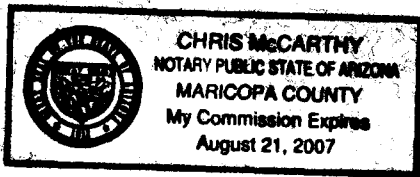
UNOFFICIAL DOCUMENT

The foregoing instrument was acknowledged before me this 29th day of October 2005
DAWNE L. WALCZAK.

Chris McCarthy

Notary Public

My commission expires: 8/21/2007



End of Document

KKC

Exhibit "A"**Legal Descriptions**

This page is appended to the original agreement solely to clarify for recordation the descriptions of the Properties:

Curtis Property:

Lot 939, PAPAGO PARKWAY NO. 6, a Subdivision as recorded in Book 84 of Maps, Page 16, official records of Maricopa County, Arizona.

Manoil-Walczak Property:

Lot 940, PAPAGO PARKWAY NO. 6, a Subdivision as recorded in Book 84 of Maps, Page 16, official records of Maricopa County, ^{Unofficial Document} Arizona, together with that part of Myrtle Avenue abandoned according to docket 10191/719.

To: Hearing Officer w/r/t Use Permit Application PL140286 (ZUP14103)
Kellie Michele Trust property (“Nunes Residence”) at 35 East Papago Drive

From: G. Manoil and D. Walczak (“Respondents”)
Owners/residents of 29 East Papago Drive

As owner-residents of the property west of the subject of this application, G. Manoil and D. Walczak respond in objection and move for denial of the use permit request to construct a second-story observation deck on the Nunes Residence property.

GENERAL CONSIDERATIONS: Papago Parkway 6 is a one-story development

1. At present, there exist no second story structures anywhere in Papago Parkway 6. Granting the requested use for the Property effectively establishes a precedent that annuls the development’s character as one of modest single-story structures.
2. Because the lots are of generally small size in Papago Parkway 6, and houses are usually only 10 feet apart, any second story yields a view into the back yards of two to seven or more nearby properties. The majority of homes in the area have privacy walls. The utility of such walls is diminished or eliminated by observation decks of the proposed type.
3. Almost without exception, the enhanced enjoyment of a property with a new observation deck is at the cost of several neighbors enjoyment of their privacy.
4. This is a particular aggravation to the 25 percent of homes in the development that have swimming pools (about 55 of the 203 lots). Nearly all such lots have built privacy walls built with the specific dual purpose of safety and so that neighbors will not observe them bathing.
5. Papago Parkway 6 homes are deed-restricted to single-family residences not to exceed one story in height.

CONSIDERATIONS SPECIFIC TO APPLICATION

1. All the foregoing considerations apply regarding Use Permit Application PL140286 (ZUP14103), which is made for the benefit of one of the five narrow lots on the south side of Papago Drive.
2. Substantially all of the back yard areas of the two properties adjacent to the subject, including swimming pools and decks, will be exposed fully by the proposed observation deck. The photos submitted with the application do not reflect the actual views from the proposed deck as to any of its (a) location, (b) height, (c) vertical depth of view, and (d) horizontal breadth of view.

3. Thus, the six-foot privacy walls built by owners of the adjacent lots, including Respondents', are ineffective if observation is from a height of 15 to 16 feet above grade and 10 feet south of the existing porch.
4. No other home on the south side of Papago Drive has requested an observation deck in order to view the Papago Buttes. The buttes continue to be at a substantial elevation from the grade of Papago Drive. If the vista from the rear porch of 35 East Papago Drive is impaired in any way, it is principally or exclusively because of tree plantings on the property.
5. In sum, any enhancement to the enjoyment of the Nunes Residence property by the requested use comes at the cost of an equivalent or greater diminution of the Respondents' enjoyment of their property. Virtually all of Respondents' rear yard and literally the entire shallow-end half of Repondents' pool and spa would be exposed for observation by parties on the second-floor deck.