



Staff Report

Agenda Item No. D-1

To: City of Imperial Planning Commission
From: Othon Mora, Community Development Director
Date: February 16, 2023
Item: Variance 22-02
Deviation from Side Yard Setback Development Standards

Applicant:	George Bernal
Project Location:	643 Costa Azul Street
Zoning:	R-1 (Residential Single Family)
Recommendation:	Planning Commission Variance 22-02 Review Request

Background

Applicant, George Bernal, is requesting a review of Variance 22-02 to allow the deviation from the City of Imperial's Property Development Standards. In January 2022, the City of Imperial amended Section 24.03.140 of the City of Imperial Municipal Code relating to Development Standards for Detached Canopies in Residential Zones. Municipal Code Section 1: Section 24.03.140(A)(1) reads as follows:

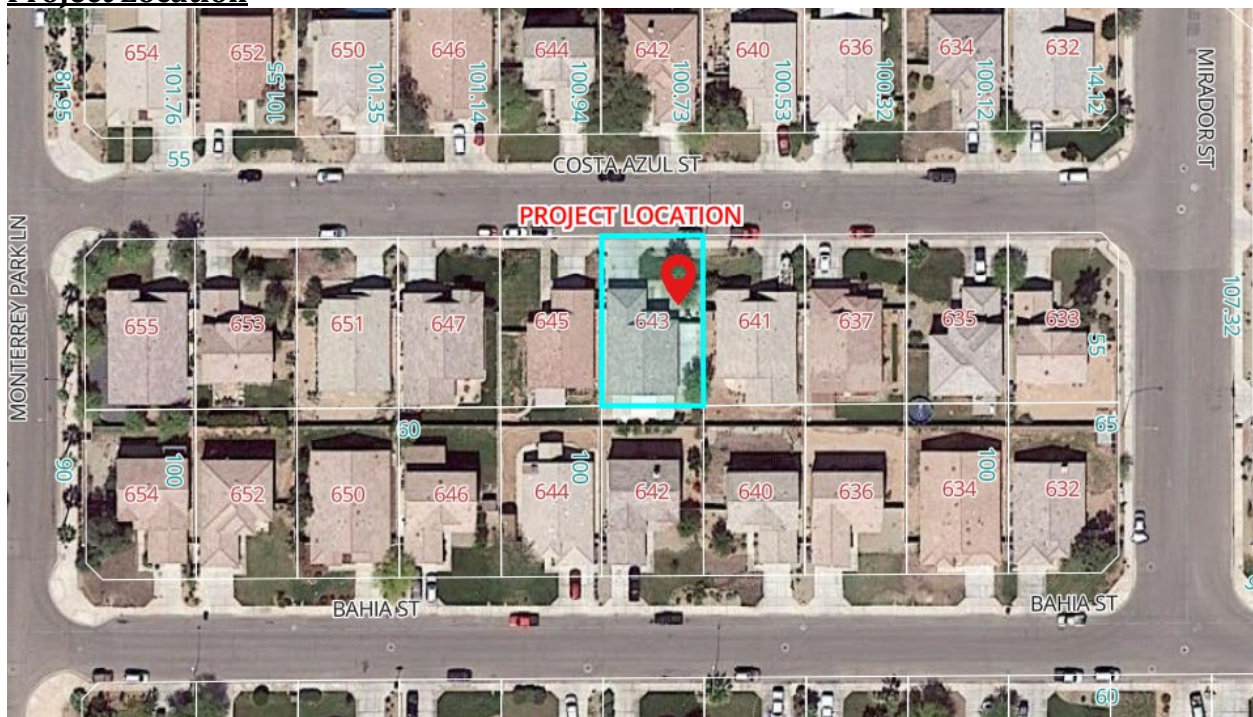
"Accessory buildings or structures, attached or detached, may be located within an interior side yard or rear yard; provided that such structure is located no closer than three (3) feet to an interior side or rear lot line."

After living in El Centro for a few years, Mr. Bernal returned to Imperial and resettled into 643 Costa Azul in 2009. Mr. Bernal considers Imperial to be his hometown and prefers Imperial's elevated quality of life and safer neighborhoods for his family. Mr. Bernal's 6,000 square foot property is positioned in the center of the block with surrounding neighbors closely abutting his property to the South, East and West, thus providing no significant air circulation to allow him to enjoy any outside hobbies or provide a pleasant

outside area for his grandchildren when the temperatures rise. His home has three East facing windows that allowed too much light and heat in and made it difficult to keep his home cool during our extreme hot Summers. In an effort to improve his energy efficiency, Mr. Bernal purchased and constructed a 600 square foot Alumawood® custom patio structure on the East side of his home with a side yard setback of one (1) foot and 5 inches for maximum protection from the unrelenting solar light and heat he experienced over sixty percent of the day. The custom patio structure constructed on the Southern portion of the home meets the development standard's rear yard setback requirement. At the time of ordering his custom Alumawood® Patio Kit, Mr. Bernal had limited size options available and he ordered the size that he believed would best suit his needs with the available side yard square footage. Since the custom patio structure was built, he, and his neighbor to the East, have experienced tremendous improvement in reducing the temperature in their homes, and have significantly improved energy efficiency that have consequently lowered their power costs. His surrounding neighbors are proponents of the project and find his patio structure beneficial, aesthetically pleasing and in no way unsafe or detrimental to the public's health/welfare. This Variance request has originated from a code compliance case that is pending Planning Commission's decision. If Variance 22-02 is not approved, Mr. Bernal will be forced to demolish or modify the existing Alumawood® custom built patio structure and concrete work with an estimated cost of \$16,000.

The project's public hearing, originally scheduled for February 8, 2022, was continued to the February 22, 2023 planning commission meeting for staff revisions and recommendation.

Project Location



Site Photos





Required Findings:

In order to approve Variance 22-02, the Planning Commission is required to review six findings per Section 24.19.400 of the City of Imperial's Zoning Ordinance. The findings are listed below, along with the reasons why staff considers that the findings are or are not met in this case. These findings are:

- 1. Special circumstances apply to the property. These can be it's size, shape, topography, location, or surrounding structures. You must explain how these circumstances deprive your property of the privileges enjoyed by other property in the neighborhood which is zoned the same, and;**

The location of the subject site is closely surrounded by residential homes to The South, East and West, blocking any air circulation or relief from the Imperial Valley's extreme temperatures.

- 2. The variance will meet the intent of the zoning on the parcel, and will not be detrimental to public health, safety, and welfare, and not be detrimental to other property in the neighborhood; and,**

The approval of the Variance meets the Residential Zone's purpose "to ensure adequate air and privacy and open space for each dwelling" and "to protect Residential properties from noise, illumination, odors, smoke and other objectionable influences." The patio structure does not present to be detrimental to public health, safety, welfare nor to other properties in the neighborhood.

- 3. The variance will not be a grant of special privilege in the neighborhood, and will not allow you to build in a way that would not be allowed for someone else.**

The Variance to deviate from the side yard setback development standards is considered an approved privilege for a property owner that will not be allowed for other property owners. However, Mr. Bernal, once made aware of the code compliance violation, quickly complied with Community Development in initiating the process of going through the appropriate measures to have said privilege approved.

- 4. The granting of the Variance or its modifications will not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and**

The granting of the Variance to deviate from the side yard setback development standards is considered a privilege and will be inconsistent with limitations upon other property owners in the vicinity. Mr. Bernal has stated that his neighbors like his patio structure and are interested in the installation of similar structures on their properties. He has warned them of the code

compliance violation and discourages anyone that inquires to deviate from the City's development standards.

- 5. The granting of this Variance does not allow a use or activity which is not otherwise expressly authorized by the zoning regulation governing the parcel of property.**

The granting of Variance 22-02 only modifies the Residential Zone Development Standards specifically identified; all other Residential Zone Development Standards must be adhered to.

- 6. That granting the Variance or its modification will not be incompatible with the City of Imperial General Plan.**

The granting of Variance 22-02 will not be incompatible with the City of Imperial General Plan.

Environmental:

This item is Categorically Exempt from the California Environmental Quality Act (CEQA) per Section 15301-Existing Facilities and Section 15303-New Construction or Conversion of Small Structures.

Recommendation

Staff recommends the Planning Commission conduct a public hearing to receive comments for and against the project. Unless sufficient evidence to the contrary is presented at the public hearing, staff recommends that the Planning Commission **deny** the variance. The accessory structure shall be located no closer than three (3) feet to an interior side lot line as per the Imperial Municipal Code and the projection (overhang) must not encroached within two (2) feet from the lot line as per the California Residential Code.

Attachments

- Draft Resolution PC2023-01 with Conditions of Approval
- Site Plan
- Letter from Maria Rafaela Ramirez/Neighbor

DRAFT RESOLUTION PC2023-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IMPERIAL APPROVING VARIANCE 22-02 FOR GEORGE BERNAL ALLOWING THE DEVIATION OF THE ORDAINED THREE-FEET SIDE YARD SETBACK REQUIREMENT TO ALLOW A ONE FOOT, FIVE-INCH SIDE YARD SETBACK FOR THE CONTINUED USE OF AN EXISTING PATIO STRUCTURE LOCATED AT 643 COSTA AZUL STREET (APN 064-272-006)

WHEREAS, George Bernal submitted a request for a Variance for the deviation of the ordained development standards regarding side yard setback requirements; and

WHEREAS, a duly notified public hearing was held by the Planning Commission during a meeting on January 25, 2023 and continued on February 22, 2023;

WHEREAS, upon hearing and considering all testimony and arguments, analyzing the information submitted by staff and considering any written comment received, the Planning Commission considered all facts relating to the request for a Variance.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Imperial as follows:

- A) That the foregoing recitations are true and correct; and
- B) The project has been reviewed in accordance with the requirements set forth by the City of Imperial for implementation of the California Environmental Quality Act; and
- C) Installation and alteration of the property and deviation from the setback requirements are ministerial and therefore categorically exempt from the California Environmental Quality Act per Sections 15301 and 15303.
- D) There are no sensitive resources located within the area or adjacent to the area of the project so as to be significantly impacted by the project; and
- E) That based on the evidence presented at the public hearing, the Planning Commission hereby **APPROVES** Variance 22-02 for George Bernal for the deviation of three-foot side yard setback requirements and allow a one-foot, five inch side yard setback and the continued use of the existing patio structure, subject to the conditions of approval outlined in Exhibit A and based on the following findings:
 - 1. That granting the Variance will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in such vicinity and zone in which the property is located.

2. The granting of this Variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.
3. The granting of this Variance does not allow a use or activity which not otherwise expressly authorized by the zoning regulation governing the parcel of property.
4. That granting the Variance or its modification will not be incompatible with the City of Imperial General Plan.

PASSED, ADOPTED AND APPROVED by the Planning Commission of the City of Imperial, this 22th day of February, 2023.

Mark Hammerness
Planning Commission Chairman

ATTEST:

Kristina Shields
City Clerk

EXHIBIT A

CONDITIONS OF APPROVAL

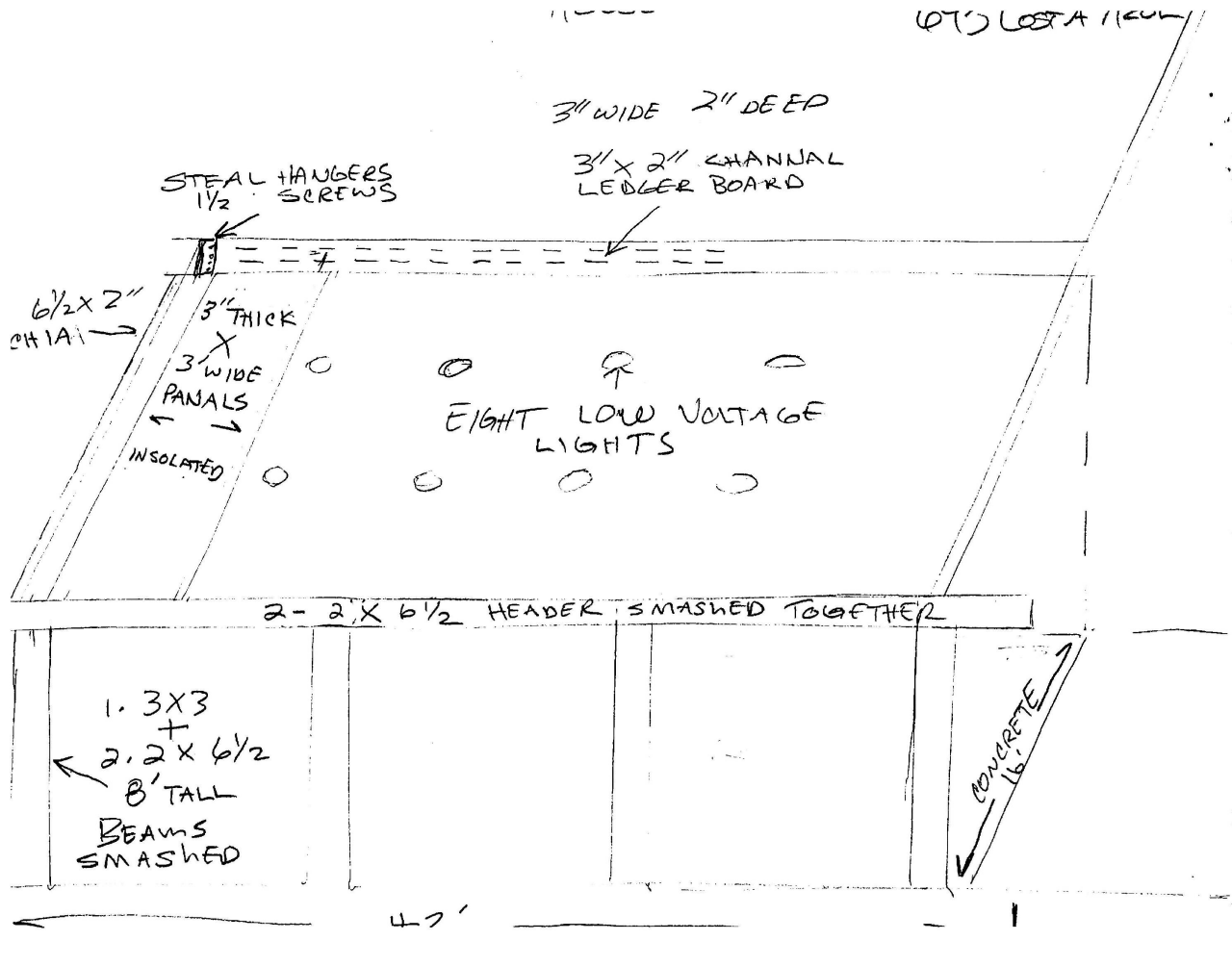
**VARIANCE 22-02
George Bernal
643 Costa Azul Street
APN 064-272-006**

1. Applicant is allowed to maintain the existing side yard patio structure with the one-foot, five-inch setback upon Planning Commission adoption of Resolution PC2023-01 for Variance 22-02, approving the deviation from the City of Imperial's Property Development Standards side yard setback requirements. Planning Commission denial of Variance 22-02 will constitute the Applicant bringing the existing side yard patio structure up to the three-foot side yard setback code.
2. Applicant must obtain a building permit from the City of Imperial's Community Development Department, whether Variance 22-02 is approved or denied, along with any required development and/or construction plans, including payment of processing fees.
3. Applicant shall not hold the City of Imperial or any of its employees responsible for any incidents regarding Variance 22-02.
4. The provisions of Variance 22-02 are to run with the land/project and shall bind the current and future owner(s) successor(s) in interest, assignee(s) and/or transferor(s) of said project.
5. The Applicant shall be responsible for the removal of all graffiti from the property within seventy-two (72) hours of its appearance on the property.
6. The Applicant shall be responsible for maintaining the property free of litter at all times.
7. Applicant shall comply with all local, State and Federal laws, regulations, rules, ordinances, and standards as they pertain to this project, whether specified herein or not. Where conflicts occur, the most stringent shall apply.
8. The approval of Variance 22-02 shall not constitute the waiver of any requirement of the City's Ordinances or regulations, except where a condition set forth herein specifically provides for a waiver.
9. The Applicant shall pay all applicable fees as required by the city.
10. Applicant must obtain an approved building permit from the Community Development Department within six (6) months of approval of Variance 22-02. If the applicant does not obtain an approved building permit from the Community

Development Department, Variance 22-02 becomes null and void based on the final date of approval.

11. If the Community Development Department finds and determines that the Applicant or successor-in-interest has not complied or cannot comply with the terms and conditions of Variance 22-02, or the Planning/Building Division determines that the permitted activities constitute a nuisance, the City shall provide the Applicant with notice and opportunity to comply with the enforcement or abatement order. If after receipt of the order (1) Applicant fails to comply, and/or (2) Applicant cannot comply with the conditions set forth in the Variance, then the matter shall be referred to the Planning Commission, or to the appropriate enforcement authority, for modification, suspension, or termination.
12. As between the City and the Applicant, any violation of Variance 22-02 approval may be a "nuisance per se". The City may enforce the terms and conditions of Variance 22-02 in accordance with its Codified Ordinances and/or State law. The provisions of this paragraph shall not apply to any claim of nuisance per se brought by a third party.
13. Applicant shall not be permitted to maintain a "nuisance", which is anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and/or (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and/or (3) occurs during or as a result of the approved project.

Submitted Site Plan



Neighbor's Letter

April 5, 2021

City of Imperial
Imperial Code Enforcement Department
420 S Imperial Ave
Imperial, CA 92251

To whom it may concern,

I, Maria Rafaela (Perez) Ramirez, am the homeowner of 641 Costa Azul Street, Imperial CA 92251.

This letter is in regards to my neighbor George Bernal who lives at 643 Costa Azul Street, Imperial CA 92251.

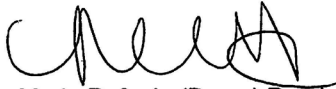
Mr. Bernal recently received a noticed from the city code enforcer, because of his covered patio. I do not agree with the city's recommendation that the patio be removed.

Mr. Bernal's covered patio is a beautiful addition to our neighborhood. As the closest neighbor, I enjoy the shade the patio offers my home. As you know, we have many hot sunny days in our desert community, so having a shaded area increase the value of our homes.

I graciously ask that you reconsider your request to have the patio removed.

Should you have any questions, please call me at 760-562-5797.

Grateful,



Maria Rafaela (Perez) Ramirez