INDIAN WELLS PLANNING COMMISSION March 30, 2023



To:

Planning Commission

From:

Community Development

Prepared by:

Andréa Urbas, AICP CEP CUD, Contract Planner

Subject:

Consider Resolution No. PC 2023-02 Recommending City Council Approve Variance No. 2023-01 for Front and Side-Front Perimeter Five-foot (5') High Block Wall to be Setback 12-feet from Curb for Existing Residence Located at 76470 Shoshone Drive (APN: 633-224-013), and Finding the

Project Exempt from CEQA.

RECOMMENDED ACTION:

Planning Commission **OPENS** the Public Hearing, takes any public testimony, and **CLOSES** the Public Hearing; and

FINDS the project to be exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant CEQA Guidelines § 15303(a)(e), New Construction or Conversion of Small Structures; and

ADOPTS Resolution No. PC 2023-02, recommending City Council approve Variance No. 2023-01, to allow encroachment into the front and side-front yard setbacks for a five-foot (5') high masonry block wall for existing residence, located at 76470 Shoshone Drive (APN: 633-224-013).

DISCUSSION:

SUMMARY:

Applicant Mr. Jason Whitley (Whitley Construction), on behalf of owner Ms. Patricia Osmanson, seeks to remodel, add to an existing home, and construct a pool on the lot located at 76470 Shoshone Drive (Attachment 2). The lot is irregular in shape, constraining the placement of a pool in the rear yard. Due to the irregular shape of the parcel, the Applicant requests a Variance pursuant to Section 21.06.050 of the Indian Wells Municipal Code ("IWMC") to construct the pool in the side-front courtyard of the property, while complying with the California State Health and Safety Code Section 115923 AB 3305, which mandates a 5-foot high wall as a pool barrier.

As a corner lot, the subject property is bound by Shoshone Drive along the front of the home and Indian Wells Lane along the side-street frontage. The lot is an irregular shape with a 'bullnose' profile at the intersection of these two streets, and the home has been situated toward the back of the property, constraining use of the rear and side yards. The bullnose portion of the lot formally served as a semicircular (diagonal,) driveway connecting to Shoshone Drive and Indian Wells Lane (Attachment 3). The lot is further affected by 8-foot 6-inches of right-of-way (ROW) between the curb and the front property line along Shoshone Drive, and a more expansive 12-foot ROW along Indian Wells Lane. IWMC Section 21.50.050(3)(b) requires a 10-foot setback from "property line" to construct a 5-foot high wall. Considering the lot is affected by almost 9-feet of ROW along Shoshone, and 12-feet of ROW along Indian Wells Lane, the strict application of the IWMC would effectively result in a pool barrier wall setback close to 19-feet from the street along Shoshone Drive, and 22-feet from the street along Indian Wells Lane.

Due to the irregular shape of the lot, its curved frontage, the existing configuration of the home on the lot, and expansive ROW, the Applicant is formally requesting a Variance to construct the required pool barrier wall 12-feet from the back of curb, instead of 10-feet from the property line. It is the homeowner's contention that this would allow adequate deck space between the home and the pool, while still maintaining a generous setback between the wall and street (Attachment 4), consistent with the location of other courtyard walls in the neighborhood.

In addition, the proposed wall location has been designed to comply with the protection of intersection visibility standards (corner cutback area) outlined in Section 21.50.040 of the IWMC (refer to Attachment 4). The Applicant is also proposing to install and maintain an attractive desert landscape design between the wall and curb, consisting of decorative groundcover, succulents, cacti, bougainvillea, and a variety of shrubs and trees (Attachment 5).

The Applicant initially applied for Administrative Relief per IWMC Section 21.06.090(b)(5) which states "...the location of front and corner lot walls on a single-family lot may be adjusted to be consistent with the setbacks of existing front and corner lot walls in the immediate area, provided the character of the area is not detrimentally affected."

An Administrative Relief Hearing was held on this matter on October 28, 2021, and a public comment in opposition of the proposed wall encroachment was expressed by a member of the public who felt the character of the area would be detrimentally affected by allowing the proposed wall location within the setback. In response to this concern, a Continuance was granted to allow the Applicant and the concerned member time to meet and identify a potential resolution. A second Director's Hearing was held on February 7, 2022, where it became apparent there was not going to be an amicable resolution, and therefore, Administrative Relief was denied. The Applicant was informed he would either be required to setback the wall 10-feet from the property lines, or could formally apply for Variance per Section 21.06.050.

The associated residential addition and remodel project were subsequently reviewed and approved by the City's Design Review Committee (DRC) on April 7, 2022. A Building Permit was issued on June 3, 2022 for the approved addition and remodel, and now the Applicant is formally requesting the Planning Commission and City Council review and make a determination on the request for a Variance to permit construction of the required pool barrier wall within the front and side-front setbacks, as proposed.

ANALYSIS:

IWMC Section 21.06.050 requires findings be made to approve a variance to any zoning standards. The following findings are required:

1. The strict application of [the] Zoning Code deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings.

FINDING: The property exists within the Eldorado Palms neighborhood, located within Planning Area 4 (subarea 4.1). The neighborhood was developed as an ungated portion of Indian Wells Country Club. Large lots with extensive landscaping are commonplace, and most homes (although not all,) have pools within rear or front yards. Although most properties in the area are devoid of perimeter walls, some do, including the contiguous lot to the northwest, which was granted such a Variance.

The City's Municipal Code, §21.50.010, stipulates the requirements for perimeter walls to permit full enjoyment of property, while providing for the life/safety and general open appearance for persons using sidewalks and streets. In residential zones, the location of front and corner lot walls may be adjusted, through Administrative Relief, to be consistent with the setbacks of existing front and corner lot walls in the immediate area, provided the character of the area is not detrimentally affected. Due to the odd shape of the corner parcel (resembling a bullnose profile,) and orientation of the existing home on the lot, the Applicant's options for improving the home with a modest addition, and a new pool/patio area, are extremely limited without any intrusion of the pool barrier wall into a setback.

The granting of the Variance is consistent with the design and placement of perimeter walls in the surrounding vicinity, which were also approved by Variance, including, Variance No. 2004-03 allowing construction of a 5-foot high wall on the side-front property line and up to 5-feet from the front property line at the contiguous residential home to the northwest, at 76440 Shoshone Drive. Variance No. 3-85-5 permitted a 4-foot 6-inch high privacy wall located 5-feet from the front property line, at 45560 Apache Road. Variance No. 2003-06 permitted a 5-foot

high block wall located 3-feet from the front property line, at 77056 Desi Drive, and Variance No. 3-75-5 permitted a 5-foot high block wall on the property line, at 77056 Desi Drive.

2. The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

FINDING: The granting of the Variance would not result in any detrimental consequences to the public health, safety, or welfare nor be materially injurious to properties or improvements in the vicinity as the corner cutback requirement for intersection visibility will be maintained, allowing for unobstructed corner line-of-sight visibility. In fact, as proposed, the elimination of the diagonal driveway with access to both streets, will improve traffic safety at the intersection. A 12-foot setback will be maintained from the wall to the affected streets with extensive landscaping, reducing the visual impact of the proposed wall, and creating harmony with the landscaped street appeal commonly found throughout the neighborhood.

3. The granting of the Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and same zoning classification.

FINDING: The Applicant provided a letter of justification, with findings, for consideration of granting the requested Variance (Attachment 6). In the letter, the Applicant provides examples of other homes in the surrounding neighborhood that were either previously granted a Variance or Administrative Relief for encroachment into the front setback.

Prior City approvals for block wall encroachments include:

- Variance 2004-03 for construction of a 5-foot high block wall on the side front property line, at 76440 Shoshone Drive.
- Variance 3-85-5 permitting a 4-foot 6-inch high privacy wall to be located five-feet from the front property line, at 45560 Apache Road.
- Variance 2003-06 permitting a 5-foot high block wall to be located 3-feet from the front property line, at 77055 Desi Drive.
- Variance 3-81-7 permitting a 58-inch encroachment for a carport conversion, located 76445 Pala Palms Drive.
- Variance No. 3-75-5 permitting a 5-foot high block wall on the property line, at 77056 Desi Drive.
- Administrative Relief No. 2000-07 approving a 5-foot high wall within the 10-foot setback area, at 75950 Alta Mira Drive.

Considering the precedent of other perimeter walls in the surrounding vicinity that were granted approvals for Variances or Administrative Relief, the Applicant's

request does not constitute a grant of special privilege inconsistent with other properties in the surrounding area.

4. The granting of the Variance does not authorize a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

FINDING: Section 21.23.030 identifies permitted uses within the City's Residential Very Low Density (RVLD) zoning district. Single-family detached residential is the primary use permitted within the RVLD zone. Section 21.50.050 identifies allowable wall heights, locations and materials for residential uses. Granting the Variance does not authorize any other use or activity in violation of RVLD zoning regulations, other than permitting a wall encroachment into the front and side-front yard setback.

Granting the proposed Variance would permit the construction of the proposed pool barrier wall 12-feet from the curb face, instead of 10-feet from the property line. Pursuant to IWMC Chapter 21.60 specifying requirements for architectural review, the Applicant has received approval from the City's Design Review Committee (DRC) on April 7, 2022, - for the associated residential remodel and addition. Per the City's standard Planning and Building permit review process, the remainder of the proposed construction was determined to conform to the City's zoning and building codes, including building envelope, roof heights, and construction standards.

ENVIRONMENTAL

This project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State and local CEQA Guidelines, and the environmental regulations of the City. The City, acting as Lead Agency, determined that the project is exempt from CEQA pursuant to Public Resources Code Section 21080 and CEQA Guidelines Section 15303(a)(e) New Construction or Conversion of Small Structures.

ATTACHMENTS:

- 1. Resolution No. PC 2023-02
- 2. Vicinity Map
- 3. Aerial Photo
- 4. Proposed Wall Location (Site Plan)
- 5. Wall Simulations (Shoshone & Indian Wells Ln)
- Applicant Letter of Justification

RESOLUTION NO. PC 2023-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF INDIAN WELLS, CALIFORNIA, RECOMMENDING APPROVAL OF VARIANCE NO. 2023-01 TO ALLOW ENCROACHMENT INTO THE FRONT AND SIDE-FRONT SETBACK FOR A NEW 5-FOOT HIGH COURTYARD WALL TO BE LOCATED 12-FEET FROM CURB FOR AN EXISTING RESIDENCE LOCATED AT 76470 SHOSHONE DRIVE (APN: 633-224-013) AND FINDING THE PROJECT EXEMPT FROM CEQA

WHEREAS, Jason Whitley, on behalf of owner Ms. Patricia Osmanson (the "Applicant"), filed an application with the City of Indian Wells ("City") for Variance No. 2023-01, pursuant to Indian Wells Zoning Code Section 21.06.050(b), to allow a 6-foot 6-inch encroachment into the front yard setback and a 10-foot encroachment into the side-front setback to permit construction of a 5-foot high courtyard wall to serve as a pool barrier (the "Project"), while still maintaining a 12-foot setback between the wall and affected streets at the existing residence located at 46470 Shoshone Drive (the "Property"); and

WHEREAS, the City has Noticed the Public Hearing for the proposed Variance in accordance with Government Code section 65090; and

WHEREAS, on March 30, 2023, the Planning Commission held a duly noticed public hearing on the Project in conformance with California Government Code and various Indian Wells Municipal Code sections and adopted by unanimous vote Resolution No. PC 2023-02 recommending that the City Council approve the Project; and

WHEREAS, pursuant to the Indian Wells Zoning Code Section 21.06.050(d), findings for applications considering a variance shall be made by the Planning Commission to ensure conformance with the City's Zoning Code, the public health, safety, or welfare, and the General Plan; and

WHEREAS, after careful consideration of the staff report, public testimony, and all of the information presented at the hearing, the Planning Commission finds that:

1. The strict application of this Zoning Code deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings.

FACT: The Property exists within the Eldorado Palms neighborhood, located within Planning Area 4 (subarea 4.1). The neighborhood was developed as an ungated portion of Indian Wells Country Club. Large lots with extensive landscaping are commonplace, and most homes have pools which are located within rear or front yards. As a corner lot, the Property is bound by Shoshone Drive along the front of

the home and Indian Wells Lane along the side-street frontage. The lot is an irregular shape with a 'bullnose' profile at the intersection of these two streets, and the home has been situated toward the rear of the lot, constraining use of the rear and side yards. The bullnose portion of the lot formally served as a semicircular driveway connecting to Shoshone Dr. and Indian Wells Lane. The lot is further affected by 8-feet 6-inches of right-of-way (ROW) between the curb and the front property line along Shoshone Drive, and a more expansive 12-feet of ROW along Indian Wells Lane.

Considering the irregular shape of the lot, its curved frontage, the existing configuration of the home on the lot, and expansive ROW affecting the lot; the strict application of the Zoning Code deprives the homeowner the opportunity to build a pool and patio area at the front of the home while accommodating the required 5-foot high pool barrier wall per California State Health and Safety Code Section 115923 AB 3305. The granting of the Variance would still maintain a generous 12-foot setback between the wall and affected streets, and would not obstruct the line-of-sight within the City's required corner cutback at the intersection of Shoshone Dr. and Indian Wells Lane per Zoning Code Section 21.50.040.

2. The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

FACT: The granting of the Variance would not result in any detrimental consequences to the public health, safety, or welfare nor be materially injurious to properties or improvements in the vicinity as the corner cutback requirement for intersection visibility will be maintained, allowing for unobstructed corner line-of-sight visibility. Furthermore, a 12-foot setback will be maintained from the wall to the affected streets with extensive landscaping, reducing the visual impact of the proposed wall, and creating harmony with the landscaped street appeal commonly found throughout the neighborhood.

3. The granting of the Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and same zoning classification.

FACT: The granting of the Variance is consistent with the design and placement of perimeter walls in the surrounding vicinity and does not constitute a grant of special privilege inconsistent with other properties in the surrounding area or same zoning classification. Prior City approvals of similar variances in the vicinity include:

- Variance 2004-03 for construction of a 5-foot high block wall on the side front property line at 76440 Shoshone Drive.
- Variance 3-85-5 permitting a 4-foot 6-inch high privacy wall to be located five-feet from the front property line at 45560 Apache Road.

- Variance 2003-06 permitting a five-foot high block wall to be located 3-feet from the front property line at 77055 Desi Drive.
- Variance 3-81-7 permitting a 58-inch encroachment for a carport conversion located at 76445 Pala Palms Drive.
- Variance No. 3-75-5 permitting a 5-foot high block wall on the property line at 77056 Desi Drive.
- 4. The granting of the Variance does not authorize a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

Section 21.23.030 identifies permitted uses within the City's Residential Very Low Density (RVLD) zoning district. Single-family detached residential is the primary use permitted within the RVLD zone. Section 21.50.050 identifies allowable wall heights, locations and materials for residential uses. Granting the Variance does not authorize any other use or activity in violation of RVLD zoning regulations, other than permitting a wall encroachment into the front and side-front yard setback.

NOW, THEREFORE, the Planning Commission of the City of Indian Wells does hereby resolve, determine, find, and order as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as substantive findings of this Resolution.

SECTION 2. This Project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State and local CEQA Guidelines, and the environmental regulations of the City. The City, acting as Lead Agency, determined that the project is exempt from CEQA pursuant to Public Resources Code Section 21080 and CEQA Guidelines Section 15303(a)(e) New Construction or Conversion of Small Structures.

SECTION 3. The Planning Commission **ADOPTS** Resolution No. PC 2023-02 recommending that the City Council approve Variance No. 2023-01 concerning the proposed Project subject to the conditions listed on Exhibit "A" attached hereto and by this reference incorporated herein.

SECTION 2. The Community Development Director shall transmit this recommendation to the City Council, and Variance No. 2023-01 shall be scheduled for consideration on the consent calendar before the City Council. Acceptance by approval of the item on the Consent Calendar (**RECEIVE AND FILE**) shall constitute granting of the recommended portion of Variance No. 2023-01 by the City Council, in accordance with Zoning Code Section 21.06.050(a).

City of Indian Wells Resolution No. PC 2023-02 Page 4

SECTION 3. The Planning Department shall certify to the adoption of this Resolution and shall mail by first class, prepaid, United States mail, a certified copy of this Resolution to the Applicant.

PASSED, APPROVED, AND ADOPTED by the Planning Commission of the City of Indian Wells, California, at a regular meeting held on this 30th day of March 2023.

JIM SNELLENBERGER CHAIR

CERTIFICATION FOR RESOLUTION NO. PC 2023-02

I,	Jon	Berg,	Community	Development	Director	of the	e City	of	Indian	Wells,	California,	DO
HE	REE	SY CE	RTIFY that t	he Planning Co	ommissio	า cons	ists of	five	(5) me	mbers;	that the a	bove
an	d for	egoing	Resolution v	was duly and r	egularly p	assed	and a	dopt	ed at a	regular	meeting o	f the
Pla	nnin	g Com	imission of th	ne City of India	n Wells o	n the	30 th da	ay of	f March	2023, b	y the follo	wing
vol	te:											

AYES:
NOES:

ATTEST:

APPROVED AS TO FORM:

CRAIG HAYES
COMMUNITY
DEVELOPMENT DIRECTOR

City of Indian Wells Resolution No. PC 2023-02 Page 5

EXHIBIT "A" Conditions of Approval for

Variance No. 2023-01

March 30, 2023

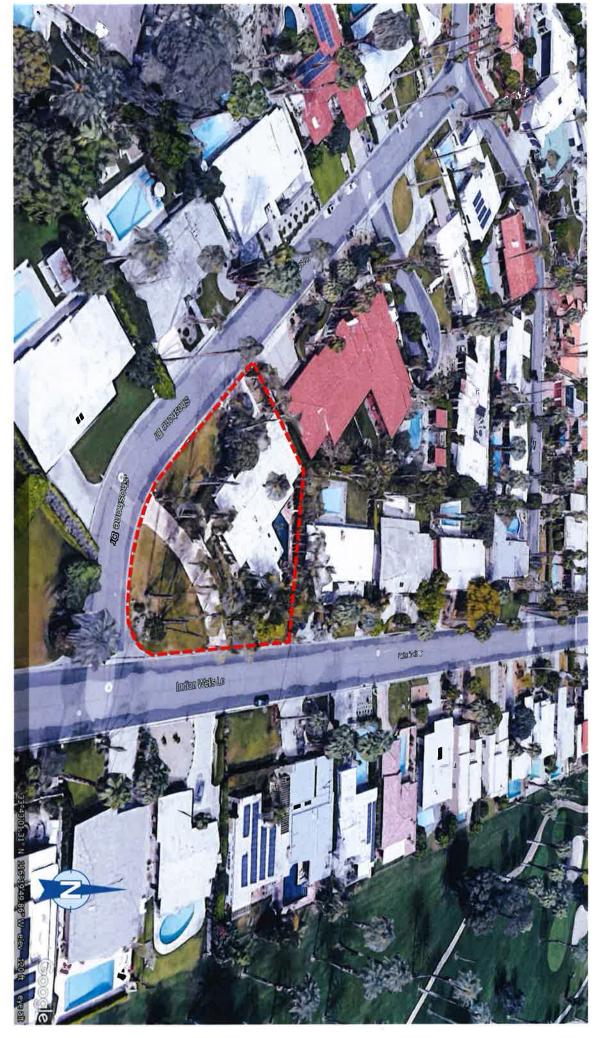
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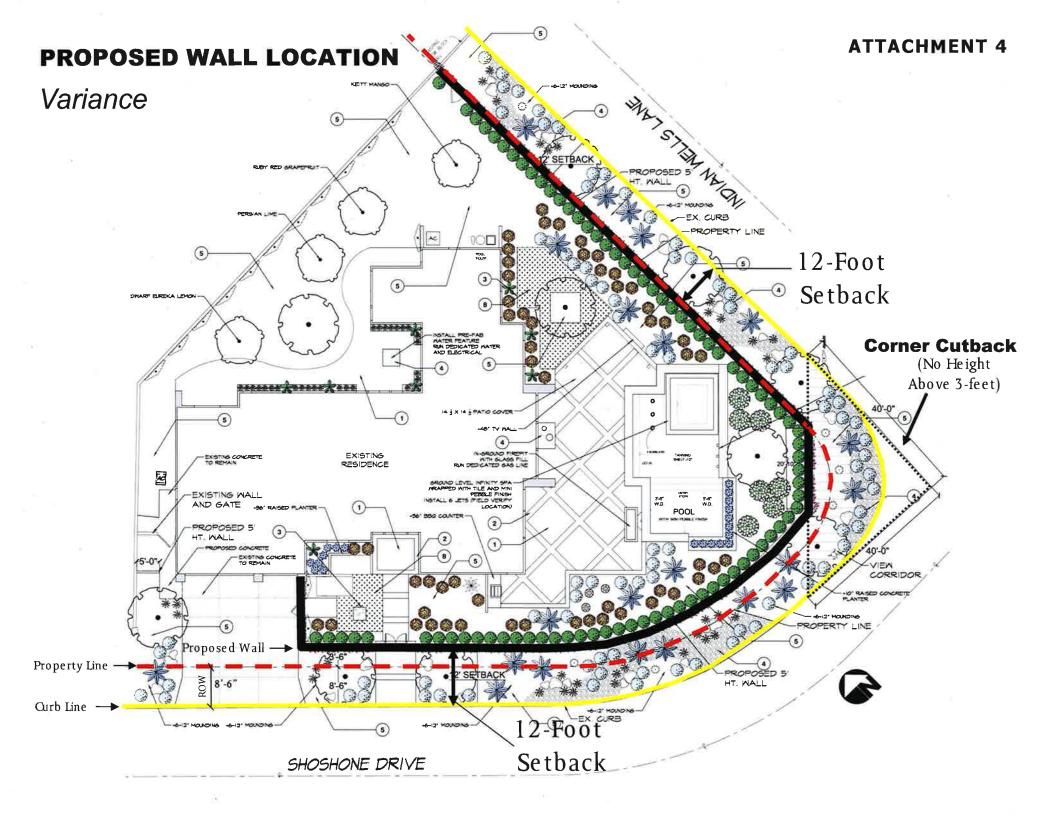
- The Applicant shall defend, indemnify, and hold harmless the City of Indian Wells 1. and its officials, officers, employees, and agents from and against any claim, action, or proceeding against the City of Indian Wells, its officers, employees, or agents to attack (including any judicial proceedings or an referendum), set aside, void, or annul any approval or condition of approval of the City of Indian Wells concerning this project, including but not limited to, any alleged act or failure to act related to the California Environmental Quality Act ("CEQA"), any approval or condition of approval by the Planning Commission or City Council. The City shall promptly notify the Applicant of any such claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. Applicant shall defend, with counsel mutually chosen by City and Applicant, at Applicant's own cost, expense and risk, any and all such aforesaid suits, actions or other proceedings of every kind that may be brought or instituted against City, its officials, officers, employees and agents. Applicant shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, employees or agents in any such suits, actions or other proceedings. Applicant shall also reimburse City for the cost of any settlement paid by City arising out of any such claims, demands, causes of action, costs, expenses, liabilities, losses, damages, injuries, suits, actions, or other proceedings. Such reimbursement shall include, but is not limited to, payment for City's attorney's fees and costs, including expert witness fees. Applicant shall reimburse City, its officials, officers, employees and agents for any and all legal expenses and costs, including expert witness fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees or agents. In all cases, the City reserves the right, at its own option and cost, to choose its own attorney to represent the City, its officials, officers, employees, and agents in the defense of the matter.
- 2. In the event that any condition contained herein is determined to be invalid or legally unenforceable, then all remaining conditions shall remain in force.
- 3. The Project shall be developed in accordance with the approved plans, and failure to comply with any conditions of approval shall be deemed just cause for revocation of project approval by the City Council.

City of Indian Wells Resolution No. PC 2023-02 Page 6

- 4. The Applicant shall pay development impact fees at the established rates and amounts. Such fees may include, but not be limited to, new construction fee, and building permit and plan check fees.
- 5. This approval of Variance No. 2023-01 shall be used within one (1) year after final approval, or it shall become null and void, unless the time limit is extended by the City Council per City Zoning Code Section 21.06.040(e). The phrase "be used" above for purposes of the proposed Project shall mean the application for and approval of all applicable building permits, and commencement of physical installation of the Project. In addition, this approval of Variance No. 2023-01 shall become null and void if any such building permit no longer remains in effect due to its lapse, if such occurs following the foregoing one-year permit.
- 6. This Variance permits the construction of a 5-foot high masonry wall to encroach 6-feet 6-inches into the front yard setback along Shoshone Drive and encroach 10-feet into the side-front setback along Indian Wells Lane, and shall not be located any closer than 12-feet from the back of curb along either street frontages.
- 7. Perimeter landscaping between the wall and street frontages shall be installed and maintained consistent with the City's landscape requirements per Zoning Code Section 21.60.080(7).
- 8. There shall be no visible obstructions as defined in Zoning Code Section 21.50.040 located within the corner cutback area defined as the triangle area created by a diagonal line connecting two (2) points equal distance from the corner on the intersecting curb line at a distance measured forty (40) feet back from the intersection of the prolongation of the front and sides curb lines.
- 9. Approval of Variance No. 2023-01 shall not waive compliance with any other applicable sections of the Indian Wells Municipal Code, all other applicable City ordinances, and applicable specific plans.







ATTACHMENT 5a

SIMULATION VIEW (Shoshone Dr.)



ATTACHMENT 5b

SIMULATION VIEW (Indian Wells Ln.)



77-775 Jackal Drive Suite B Palm Desert, Ca. 92211 Office 760-341-9480 Lic. # 805021

RE: Osmanson Project 76470 Shoshone Dr Indian Wells, Ca 92210 10-31-22

Variance to be considered of the front and corner lot walls to be consistent with the existing front and corner lot walls in the neighboring immediate area. As an example, the setbacks for neighboring homes (The west, next door neighbor and two houses down on the same street) at 76440 Shoshone Dr and 76445 Pala Palm Dr in Indian Wells Ca, 92210 has set precedence to other homes setbacks in the area. Additionally, upon further examination properties located at 76-388 Fairway, 45625 Cholame, 45560 Apache and 76470 Pala Palms have also set forth precedence to the neighboring area, therefore we are requesting a variance based on the facts set forth by others. Please review the attached photos / notes provided of neighboring properties.

Findings as set forth in section 21.06.050

- 1. Yes, privileges are enjoyed by other properties in the vicinity as described above.
- 2. The granting of the variance will NOT be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- 3. The granting of the variance will NOT constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity and same zoning classification. We are proposing our wall finished height to be consistent with the set precedence of the neighboring homes.
- 4. Correct, the granting of the variance will NOT authorize a use or activity which is not otherwise expressively authorized by the zone regulation governing the parcel of the property.



