

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2023-02

A RESOLUTION GRANTING A VARIANCE FOR AN EXISTING FENCE TO ENCROACH 9-FEET WITHIN THE 10-FOOT STREET SIDE-YARD SETBACK REQUIREMENT, PROPERTY LOCATED AT 3524 SETROK DRIVE (RAUL AND JUANA MARTINEZ)

WHEREAS, an application for a variance from the provisions of Section 10-4.406(b)(2) of the Modesto Municipal Code to permit the existence of a fence within the 10-foot street-side setback at 3524 SetRok Drive was filed by Raul and Juana Martinez on October 31, 2022; and

WHEREAS, Section 10-9.102 of the Modesto Municipal Code authorizes the Board of Zoning Adjustment to grant variances subject to findings specified in Section 10-9.602; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on January 26, 2023 in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered.

WHEREAS, the proposed variance is exempt from CEQA, pursuant to Section 15305(a) of the CEQA Guidelines, which pertains to minor lot-line adjustments, side yard, and setback variances not resulting in the creation of any new parcels, as being exempt from CEQA under Section 15305(a) of the CEQA guidelines.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that based upon such evidence it finds and determines that:

1. There are special circumstances or conditions applicable to the property or building in question which do not exist for other property or buildings in the same zone and immediate vicinity because the current residence is placed in an irregular parcel shaped lot. Modesto Municipal Code table 4.1-1 Residential Development Standards require a corner lot to have a minimum width of sixty (60) feet. The corner lots southern width measures forty-eight (48) feet and fifty-five (55) inches.
2. The special circumstances or conditions are such that strict application of the provisions of MMC Sections 10-4.406(b)(2) would deprive the applicant of practical use of the property or buildings, because If the property owner were required to move the current fence line to meet the setback, they would lose much of their current usable yard. Due to siting of the house on the lot, the Gagos Drive side yard is the only usable private yard area on the lot.
3. Granting the variance will be consistent with the intent and purpose of MMC Sections 10-4.406(b)(2) and will not be detrimental to the neighborhood or public welfare because the proposal would not affect the

surrounding neighborhood as there are existing fences with similar setbacks in proximity to the property.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to William and Nickole Wann a variance from the provisions of Section 10-4.406(b)(2) of the Modesto Municipal Code to permit the existence of a fence within the 10-foot street-side setback area, subject to the following conditions:

1. All landscaping and walls shall be maintained and the premises shall be kept free of weeds, graffiti, trash, and other debris.
2. The property owner and developer shall, at their sole expense, defend, with counsel selected by the City, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding.
3. The fence will move within the lot when reaching the regular width of a corner lot of sixty (60) feet until it conforms with the ten (10) foot side-yard setbacks.
4. A building permit must be obtained if the fence is between seven (7) feet and eight (8) feet in height. No fence shall be allowed to be taller than eight (8) feet in height.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on January 26, 2023, by Board Member Niskanen, who moved its adoption, which motion was seconded by Board Member Blom and carried by the following vote:

Ayes: Blom, Desai, Goriel, Riddle, Niskanen, Vohra

Noes: None

Absent: None

Recused: None

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF  
MODESTO.

Signed copy on file in CEDD

---

Jessica Hill, Secretary