

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2023-09

A RESOLUTION DENYING A VARIANCE FOR CODY ALKIRE TO ALLOW EXISTING
FENCES AND WALLS THAT EXCEED THE MAXIMUM HEIGHT WITHIN THE
REQUIRED 7.5-FOOT STREET-SIDE YARD AND 15-FOOT FRONT YARD
SETBACKS FOR PROPERTY LOCATED AT 219 N. MORTON BOULEVARD
(APN:107-007-050)

WHEREAS, an application for a variance from the provisions of Section 10-4.406 (b) of the Modesto Municipal Code to permit existing fences and walls that exceed the maximum height within the required 7.5-foot street-side yard and 15-foot front yard setbacks for property located at 219 N. Morton Boulevard was filed by Cody Alkire on May 26, 2023; 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, there are not special circumstances or conditions applicable to this property because the subject parcel, while rounded at the corner of Lane Street and Loma Vista Way, is generally rectangular in shape, has comparable lot width and frontage length to other properties in the vicinity, and is not unusually small for corner lots in the vicinity; and

WHEREAS, strict application of the provisions of Title 10 would not deprive the applicant of practical use of the property because on corner lots legally created prior to July 7, 1955, the minimum Street side setback for a dwelling, accessory building, or fencing is seven and one-half (7.5) feet, which is reduced from the typical Street side setback of fifteen (15) feet, addressing any issues that could have been created due to the age of the property's creation and the differing standards in place at the time, and the property could feasibly allow fences and walls that comply with the standards of Title 10; and

WHEREAS, the granting of this variance will be inconsistent with the intent and purpose of Title 10 and will be detrimental to the neighborhood because by allowing a variance for these walls and fence, the Board of Zoning Adjustment would be setting precedent that it would approve post-construction variances for fence and wall height for any requestor regardless of the findings specified in Section 10-9.602, effectively eliminating the regulations in Title 10; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on September 28, 2023, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

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

1. There are no special circumstances or conditions applicable to this property or buildings in question which do not exist for other properties or building in the same zone and immediate vicinity.

The property is a corner lot with its front yard facing Loma Vista Way, and its street-side yard facing Lane Street. Lane Street has a slope of approximately 10 percent (in the vicinity of the project site) which is similar to other east-west streets in the neighborhood. Additionally, there are approximately eighteen (18) other corner lots in the immediate vicinity of the project site. Of those eighteen (18) lots, only one lot is larger. Additionally, only one lot is uniquely shaped (Blk 239 lot -079) which is triangular. The subject parcel (while rounded at the corner of Lane Street and Loma Vista Way) is rectangular in shape;

2. Strict application of the provisions of Title 10 would not deprive the applicant of practical use of the property because

The property is located within the La Loma Terrace subdivision which was subdivided in 1938. As such, Section 10-4.106 (Front and Street-side Setback) of the zoning Code applies. Specifically, on corner lots legally created prior to July 7, 1955, the minimum Street side setback for a dwelling, accessory building, or fencing is seven and one-half (7.5) feet. Lots created after July 7, 1955 require a Street side setback of fifteen (15) feet. Therefore, the special circumstance created due to the age of this subdivision has been addressed by the zoning code. There are no other special circumstances or conditions that would deprive the applicant of the practical use of the property or buildings; and,

3. The granting of this variance would be inconsistent with the intent and purpose of Title 10 and will be detrimental to the neighborhood because The property owner has built walls and fencing within the required street-side setback of seven and one-half (7.5) feet that range in height from 6.3-feet to approximately 9-feet. These walls exceed the maximum height by 2.7-feet up to 5.5-feet.

Section 10-4.406 of the zoning code provides: (1) No wall or fence shall exceed eight (8) feet in height, unless additional height is required as a condition of a zone, variance, use permit, development plan review, parcel map, subdivision map, noise mitigation or other similar action; and, (2) No wall or fence shall exceed forty-two (42) inches within the front and street side yard areas. In the R-1 zone, the street side setback required for fences taller than forty-two (42) inches (3.5-feet) is ten (10) feet.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the application of Cody Alkire for a variance be denied.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment on September 28, 2023, by Board Member Goriel, who moved its adoption, which motion was seconded by Board Member Desai, and carried by the following vote:

Ayes:	Desai, Goriel, Niskanen, Vohra
Noes:	Blom
Absent:	Riddle
Recused:	None

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

Jessica Hill, Secretary