

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2021-09

A RESOLUTION GRANTING A VARIANCE TO ALLOW A SEVEN FOOT (7 FOOT) FENCE WITHIN THE REQUIRED SETBACK ON THE PROPERTY LOCATED AT 3108 RUSH COURT; SUBMITTED BY KRISHNEEL CHAND

WHEREAS, a fence within the street side setback of ten feet (10 feet) from the property line shall not exceed a height of forty-two inches (42 inches) pursuant to Section 10-4.406 of the Modesto Zoning Code; and

WHEREAS, a fence higher than 42 inches was constructed within the required street side setback area facing Esta Avenue on the property located at 3108 Rush Court; and

WHEREAS, an application for a variance from fence height limitations for the street side setback area at 3108 Rush Court was filed by Krishneel Chand on July 20, 2021; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on August 26, 2021, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, during the public hearing, the applicant presented evidence that part of the reason for the variance request was to preserve an existing sidewalk constructed on the property, and indicated a willingness to seek a lesser variance that could still preserve the sidewalk; and

WHEREAS, the Board continued the public hearing to the September 23, 2021, meeting in order for the applicant to work with staff on a revised variance application; and

WHEREAS, Krishneel Chand has submitted an amended variance application to maintain a 7 foot fence, to encroach 2 feet 4 inches into the street side setback facing Esta Avenue;

WHEREAS, Section 10-9.601 of the Modesto Municipal Code authorize the Board of Zoning Adjustment to grant variances subject to findings in Section 10-9.602; and

WHEREAS, a continued public hearing was held by the Board of Zoning Adjustment on September 23, 2021, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed variance is exempt from CEQA under the Class 1 categorical exemptions listed in CEQA Guidelines § 15301 and § 15303; and

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

1. There are special circumstances or conditions applicable to the property or building in question which do not exist for other properties or buildings in the same zone and immediate vicinity, because a private walkway was installed parallel along the street side yard in 2019/2020 with the construction of the house and is not common on corner lots. A special circumstance exists because the existing walkway cannot meet the 10 foot street side setback requirements for a fence without removing the walkway, which will present a hardship for the applicant;
2. The special circumstances or conditions are such that strict application of the provisions of this Chapter would deprive the applicant of practical use of the property or buildings, because the strict application of the code would require the removal of the existing walkway and installation of a new walkway or relocate the fence to the inside of the existing walkway that would be less than 3 feet from the house and not provide practical use of the yard area between the fence and the house plus not fencing the portion of the walkway area;
3. Granting the variance will be consistent with the intent and purpose of this Chapter and will not be detrimental to the neighborhood or public welfare, because the proposed fence that will encroach 2 feet 4 inches into the street side setback will not be detrimental to the neighborhood and public welfare;

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it hereby grants to Krishneel Chand a variance from the provisions of Section 10-4.406 of the Modesto Municipal Code to permit a fence that exceeds the height limitations for the street side setback area subject to the following condition:

1. The existing fence shall be relocated to the outside edge of the existing walkway or 2 feet 4 inches into the street side setback by March 23, 2022.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on September 23, 2021 by Board Member Vohra, who moved its adoption, which motion was seconded by Board Member Desai, and carried by the following vote:

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

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

Original, signed copy on file in CEDD
Steve Mitchell, Secretary