

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2018-07

A RESOLUTION GRANTING A VARIANCE FOR A NEW FENCE TO ENCROACH 7.5- FEET WITHIN THE 7.5-FOOT STREET SIDE-YARD SETBACK REQUIREMENT, PROPERTY LOCATED AT 102 BUENA VISTA AVENUE (WILLIAM AND NICKOLE WANN)

WHEREAS, an application for a variance from the provisions of Section 10-4.106 (d) of the Modesto Municipal Code to permit construction of a new fence within the 7.5-foot street-side setback at 102 Buena Vista Avenue was filed by William and Nickole Wann on August 21, 2018; and

WHEREAS, Section 10-9.102 of the Modesto Municipal Code authorize 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 September 27, 2018 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 existing residence and surrounding residences pre-date current setback requirements. The current rear wall and the original wall that screened the patio were built with permits and were placed on the property line. The fence is proposed to extend easterly an additional 21 feet. There are other homes nearby that have or that were approved to have fences at the property line or well within the required setback area.
2. The special circumstances or conditions are such that strict application of the provisions of MMC Sections 10-4.106(d) 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 Buena Vista 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 10-4.106(d) 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 and screening 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 10-4.106(d) of the Modesto Municipal Code to permit construction of a new fence within the 7.5-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.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on September 27, 2018, by Board Member Goriel, who moved its adoption, which motion was seconded by Board Member Roddick and carried by the following vote:

Ayes:	Blom, Goriel, Moradian, Roddick, Vohra
Noes:	None
Absent:	Selover, Rodriguez
Recused:	None

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

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