



## Action Report

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**File #:** 18-178

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**TO:** Chair and Board of Adjustment

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** May 2, 2018

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Emerson Variance Reconsideration - 5739 N. Casa Blanca Drive (APN: 173-08-004A) Case No. BA-17-04

**RECOMMENDATION**

Staff recommends Motion "A", a motion to deny the variance request to allow existing non-conforming fence walls to remain and encroach into the setbacks.

**A. MOTION FOR DENIAL**

I move for **[denial]** of Case No. BA-17-04, a request by the Carter W. Emerson Revocable Trust, property owner of 5739 N. Casa Blanca Drive; for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow existing non-conforming fence walls to remain and encroach into the setbacks.

**Reasons for Denial:**

I find that the variance requested does not meet the variance criteria

**B. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-17-04, a request by the Carter W. Emerson Revocable Trust, property owner of 5739 N. Casa Blanca Drive; for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow existing non-conforming fence walls to remain and encroach into the setbacks. The variance shall be in compliance with the submitted plans and documents:

1. The Narrative, dated March 26, 2018 and prepared by Rose Law Group;
2. The Alta/NSPS Land Title Survey, prepared by Land Development Group and dated April 17, 2017; and
3. The Site Plan, prepared by Blochbeger Design and dated September 20, 2017.

**Reasons for Approval:**

I find that there are special circumstances, applicable to only the subject lot, meeting the variance criteria.

**BACKGROUND**

Board of Adjustment Discussion

The Board of Adjustment reviewed and denied this variance request at the January 3, 2018 meeting. Then, on March 7, 2018, the Board reviewed and granted a motion to reconsider this variance request based upon new information presented by the applicant. A copy of the March 7<sup>th</sup> meeting materials is included for reference and the applicant has also provided updated plans and documents.

Lot Conditions

The property is zoned R-43 and is 91,478 square feet in size (2.10 acres). The property is square in shape and has streets along three sides. The front yard adjoins Casa Blanca Drive, the north side yard adjoins Palo Verde Drive, the south side yard adjoins Solano Drive.

Lot History

The subject property is not located in a subdivision and was annexed into the Town in 1961. Below is a list of improvements on the property:

- December 20, 1973. Permit for a single-family residence.
- March 22, 1974. Permit for a pool.
- June 12, 1979. Permit for a carport.
- November 3, 1987. Permit for a metal barn.
- December 31, 1997. Permit for masonry fence wall.
- August 14, 2002. Permit for a new single-family residence.
- July 23, 2003. Permit for a pool.
- October 8, 2003. Permit for fence walls.
- November 14, 2003. Permit for a basketball court.

Based upon further research, staff believes there is confusion regarding the history on the subject fence walls. Due to a new home that was constructed in 2002, the property owner was required to dedicate and improve the adjoining rights-of-way (ROW) in accordance with the Town Code and General Plan. At that time, the applicant dedicated 25' of ROW adjoining Palo Verde Land and 30' of ROW adjoining Casa Blanca Drive.

On August 8, 2002, the property owner identified that the dedication of the ROW made portions of the existing fence non-conforming and sent a letter to the Community Development Director requesting: 1) that the Town allow them to keep the fence wall during construction for security, and 2) that they will demolish the non-conforming portions of the fence wall prior to obtaining a certificate of occupancy on new house. Then Community Development Director, Hamid Arshadi, granted the owner's request to allow the non-conforming portions of the fence to remain until issuance of the certificate of occupancy. The non-conforming portions of the walls were removed and the remaining conforming portions of the fence walls stayed and complied with the setback requirements at that

time (with a 10' minimum setback from Palo Verde Lane and a 10' minimum setback from Solano Drive). A copy of the August 8, 2002 letter and right-of-way dedication survey is enclosed for reference.

In 2004, the Town updated the fence wall ordinance; in which the code increased the side yard setback for fences adjoining a ROW and established requirements for when non-conforming fences must be brought into compliance. The code changed the side yard setback from 10' to 20' for fences adjoining a ROW in the side or rear yard and required all non-conforming fence walls to meet current zoning requirements when remodeling more than 50% of the house or constructing a new single-family residence (per Sections 2404 and 2415 of the Town Zoning Ordinance). Since the applicant is proposing to remodel more than 50% of the house, they are seeking a variance to keep the existing north and south fence walls at their current location/setback of 10.4' and 11' (instead of reconstructing the walls at the required setback of 20').

### Request

The applicant requests a variance to allow the existing non-conforming fence walls to remain. Per Section 2404, a side or rear yard with a street is limited to a 6' tall fence wall with a 20' setback from the property line. The subject property has two existing non-conforming fence walls. One existing 6' tall fence wall that is located in the north side yard and is setback 10.4' from the north property line (adjoining Palo Verde Drive). The other existing 6' tall fence wall is located in the south side yard and is setback 11' from the south property line (adjoining Solano Drive).

Per Section 2415 of the Town Zoning Ordinance, all non-conforming fence walls must meet current setback and height requirements when remodeling more than 50% of the house or building a new single-family residence. Since more than 50% of the house will be remodeled, the applicant is requesting a variance to keep the existing fence walls at their current location/setback.

### **DISCUSSION/ FACTS:**

#### Variance criteria:

Town Code and Arizona Revised Statutes set criteria an applicant must meet before a Board of Adjustment may grant a variance request. If the Board finds an applicant meets **all** of these criteria, the Board may grant the variance. However, if the Board finds the applicant does not meet all of the criteria, the Board may not grant the variance. The following are staff's findings with regard to such variance criteria.

1. *"Such variance... will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variance under the circumstances." (Town Code Section 2-5-3(C)2).*

#### **Findings in Favor (FIFs):**

The existing fence walls are setback approximately 20' from the edge of the street, giving the appearance that the walls are compliant with the setback requirement.

**Findings Opposed (FOPs):**

There is no property hardship that warrants the request. The size, shape, and topography of the lot do not prevent the fence walls from being removed and reconstructed at the required setback.

2. *The “special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake...” (Town Code Section 2-5-3(C)4(b)).*

**FIFs:**

The hardship is not out of mistake or misunderstanding. The change in the setback requirement from the updated fence ordinance in 2004 created a non-conforming setback for the north and south fence walls.

**FOPs:**

The applicant should be aware of all special circumstances on the property and plan any designs accordingly.

3. *“Such variance from ... the strict application of the terms of [the Zoning Ordinance] ... are in harmony with its general purposes and intents...” (Town Code Section 2-5-3(C)2).*

**FIFs:**

The intent of the fence ordinance is to provide safety, noise abatement, and security with minimal impact to visual openness and the environment. The existing walls provide security for the property and noise abatement from the surrounding three streets.

**FOPs:**

The request does not meet the intent of the code as other alternatives exist. The property is a large parcel (at 2.10 acres in size) that can accommodate fence walls at the required setback. The size, shape, and topography of the lot do not prevent the fence walls from meeting setbacks. Also, moving the wall at the required setback will provide additional visual openness the code seeks to maintain and preserve.

4. *“The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor...” (Town Code Section 2-5-3(C)4).*

**FIFs:**

The special circumstance is that the property adjoins three streets.

**FOPs:**

The request is self-imposed since the fence walls can be re-built to meet setback requirements. The property is oversized for its zoning classification (at 2.10 acres), the property is square in shape, and the lot is relatively flat. As a result, there are no characteristics of the lot that prevent the fence walls from meeting setback requirements.

5. *Because of special circumstances applicable to the property, including its size, shape,*

*topography, location, or surroundings, the strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.” (Arizona Revised Statutes 9-462.06(G)(2)).*

**FIFs:**

None.

**FOPs:**

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. The size, shape, and topography of the lot do not prevent the applicant from removing the existing fence walls and construction new code compliant fences.

6. *The variance would not “constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.” (Arizona Revised Statutes 9-462.06(G)(2)).*

**FIFs:**

The fence is existing and is located 20’ from the edge of the street. Also, the neighboring property to the south has an existing fence that encroaches into the setback.

**FOPs:**

Except for the neighboring property to the south, all other properties in the area meet the setback requirements outlined in the Zoning Ordinance. Although a property adjoining three roadways is atypical, there are no property hardships (e.g. size, shape, and topography of the lot) that prevent the fence walls from meeting the 20’ setback from property line.

**COMMENTS:** During the original request (in January), a neighboring property owner inquired about the application and stated he has no objection to the request.

**COMMUNITY IMPACT:** During the original request, staff received two letters of support from neighboring property owners. Copies of the letters of support are enclosed.

**FISCAL IMPACT:** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo  
Application  
Narrative and Plan Set  
Noticing Materials

C: Nick Labadie (Applicant)  
Case File BA-17-04