

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2013-02

A RESOLUTION GRANTING A VARIANCE FROM THE MINIMUM SEVEN AND ONE-HALF-FOOT STREET SIDE YARD SETBACK REQUIREMENT FOR A NEW SEVEN-FOOT HIGH FENCE ON THE PROPERTY LINE ON PROPERTY LOCATED AT 231 MAGNOLIA

WHEREAS, an application for a variance from the provisions of Section(s) 10-4.106 (d) of the Modesto Municipal Code to permit construction of a new seven-foot high wood fence on the property line from the minimum seven and one-half-foot street side yard setback at 231 Magnolia Avenue, was filed by Brad and Nancy Hawn on February 20, 2013; 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 March 28, 2013 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 15303 (e) of the CEQA Guidelines, which exempts construction or conversion of accessory structures including garages, carports, patios, swimming pools, and fences.

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 buildings in question which do not exist for other property or buildings in the same zone and immediate vicinity, because there is a greater distance from curb to property line than average on this property (12 feet versus 7 feet for new neighborhoods).
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 applicant would not be able to provide sufficient on-site parking for the second-unit if the fence were constructed to meet the setback requirements.
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 would not create any safety problems and it is consistent with other fences throughout the neighborhood.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants approval of the application of Brad and Nancy Hawn a variance from the provisions of Section 10-4.106 (d) of the Modesto Municipal Code to permit construction of a new seven-foot high wood fence with concrete masonry pilasters approximately twelve-feet

on center to be built on the property line from the minimum seven and one-half-foot side street, side yard setback at 231 Magnolia Avenue.

BE IT FURTHER RESOLVED that the applicant is hereby further notified that the ninety (90) days approval period in which a protest of these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a) can be filed, begins on March 28, 2013, and that if a protest is not filed within this ninety (90)-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on March 28, 2013, by Will Grover, who moved its adoption, which motion was seconded by John Bergman and carried by the following vote:

Ayes:	Bergman, French Grover, Matas, Pollard
Noes:	None
Absent:	Brandvold, Swehla
Recused:	None

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

Original, signed copy on file in CEDD
Patrick Kelly, Secretary