

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2016-02

A RESOLUTION APPROVING A VARIANCE FOR SOLAR COOL PROPERTIES TO PERMIT A SEVEN FOOT HIGH WOOD AND PILASTER FENCE IN LIEU OF AN EIGHT FOOT HIGH MASONRY WALL TO SEPARATE A PROPERTY ZONED C-2 FROM A PROPERTY ZONED R-2 AT 1313 SCENIC DRIVE, MODESTO, CA

WHEREAS, an application for a variance from provision of Section 10-4.406(c)(1) of the Modesto Municipal Code to permit the construction of a seven foot wood and pilaster fence in lieu of an eight foot high masonry wall to separate a property zoned General Commercial (C-2) from adjacent residential properties at 1313 Scenic Drive was filed by Solar Cool Properties on October 23, 2015; 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 special circumstances or conditions applicable to this property since this fence was existing and separated the residentially zoned property from a use that is of similar intensity; and

WHEREAS, the requirement to build the masonry wall will deprive the applicant of practical use of the property because the cost of the wall would create an economic hardship; and

WHEREAS, the granting of this variance would be consistent with the intent and purpose of Title 10 and will not be detrimental to the neighborhood because the current use of the property will not increase any noise impacts to that what existed previously, and the current fence, with the conditions applied, will provide adequate noise and visual buffering of the commercial activity adjacent to the residences; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on December 17, 2015, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, after hearing testimony regarding the proposed variance, the Board of Zoning Adjustment voted to continue the hearing to January, 28, 2016, with direction to staff to prepare a resolution for approval, for the Board's consideration, with conditions requiring the repair of the existing fence, the installation of screen landscaping and the requirement of a masonry wall if use of the property changes; and

WHEREAS, the continued public hearing was held by the Board of Zoning Adjustment on January 28, 2016, in Chambers, 1010 Tenth Street, Modesto, California, at which additional hearing evidence both oral and documentary was received and considered.

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

1. There are special circumstances or conditions applicable to this property since this fence was existing and separated the residentially zoned property from a use that is of similar intensity;

2. The requirement to build the masonry wall will deprive the applicant of practical use of the property because the cost of the wall would create an economic hardship;
3. The granting of this variance would be consistent with the intent and purpose of Title 10 and will not be detrimental to the neighborhood because the current use of the property will not increase any noise impacts to that what existed previously, and the current fence, with the conditions applied, will provide adequate noise and visual buffering of the commercial activity adjacent to the residences;
4. Conformity with (FOC) finding.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the application of Solar Cool Properties for a variance be approved with the conditions below:

1. Prior to certificate of occupancy, the existing masonry pilaster/board fence will be repaired to the satisfaction of the Community and Economic Development Director or Designee.
2. Prior to fence construction, the developer shall obtain a building permit for the construction or reconstruction of any fence or part of the fence that is over seven feet in height.
3. The developer shall install screen landscaping along the eastern property line as approved by the Parks, Recreation and Neighborhoods. This landscaping shall be kept in a condition to create the optimal screening effect.
4. Prior to occupancy of any structure the masonry pilasters shall be treated with a graffiti-proof coating to the satisfaction of the Director of Community and Economic Development or Designee. Construction drawings shall note type of graffiti treatment used.
5. This variance is being granted based on a determination that the mobile glass business does not generate significant noise. If either (a) the glass business changes to include significant noise generators such as heavy power tools, air compressor driven tools, heavy fabrication, demolition, body work, or any automotive repair or maintenance activities other than auto glass replacement, or (b) a new use replaces the mobile glass business or occupies any portion of the building or remainder of the property, then an eight-foot high masonry wall shall be constructed where adjacent to residentially zoned property prior to occupancy of the new use, or the land owner will be required to obtain a variance from the Board of Zoning Adjustment prior to occupancy of the new use.
6. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash and other debris.

7. 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 on January 28, 2016, by Robert Selover, who moved its adoption, which motion was seconded by Vladimir Rodriguez, and carried by the following vote:

Ayes:	Matas, Morris, Rodriguez, Selover
Noes:	None
Absent:	Self
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