

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2015-04

A RESOLUTION GRANTING A VARIANCE TO AARON MILLER TO PERMIT AN 8 FOOT WALL WITHIN THE FRONT YARD SETBACK AT 300 ALICE ST.

WHEREAS, an application for a variance from the provisions of Section(s) 10-4.406(b)(2) of the Modesto Municipal Code to permit the construction of an 8 foot wall within the front yard setback at 300 Alice Street was filed by Aaron Miller on June 15, 2015; 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 24, 2015, 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 exempts single-family single residence side yard and set back variances not resulting in the creation of any new parcel.

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 the previous fence was a legal non-conforming 8 foot high fence.
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 has had historical use of the yard within the fence 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 there has been an 8 foot high fence at this location for many years. Hence, the neighborhood has always seen it at its current location.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Aaron Miller a variance from the provisions of Section (s) 10-4.406(b)(2) of the Modesto Municipal Code to permit The construction of an 8 foot wall within the front yard setback subject to the following conditions:

1. Prior to construction, the applicant will obtain a building permit for any portion of the wall that is above 7 feet in height.
2. The 8 foot wall shall be constructed of decorative masonry with cap treatment along the top east portion of the wall to the satisfaction of the Director of Community and Economic Development.

3. The wall shall be treated with a graffiti-proof coating along the western alley and eastern Magnolia locations to the satisfaction of the Director of Community and Economic Development or Designee. Construction drawings shall note the type of graffiti treatment used.
4. The applicant shall install landscaping to screen the outside of the eastern property line wall to the satisfaction of the Director of Community and Economic Development or Designee.
5. All landscaping and walls shall be maintained and the premises shall be kept free of weeds, graffiti, trash, and other debris.
6. 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.

BE IT FURTHER RESOLVED that the conditions of project approval set forth herein include certain fees, dedication requirements, reservations requirements, and other exactions, and that pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions.

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 September 24, 2015, 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 September 24, 2015, by John Bergman, who moved its adoption, which motion was seconded by Dennis Smith and carried by the following vote:

Ayes:	Bergman, Matas, Morris, Rodriguez, Selover, Smith
Noes:	None
Absent:	Pollard
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