

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2021-07

A RESOLUTION GRANTING A VARIANCE TO VERTICAL BRIDGE TO
PERMIT A 75-FOOT HIGH CAMOUFLAGED MONOPINE CELLULAR TOWER
AT PROPERTY LOCATED ON NEECE DRIVE EAST OF ROUSE AVENUE

WHEREAS, Section 10-3.406, Table 3.4-3 of the Modesto Municipal Code provides that the maximum height allowed for cellular tower facilities within the non-residential areas of the residential zones, such as schools or parks, is a maximum of 50 feet in height; and

WHEREAS, an application for a variance from the provisions of Section 10-3.406 Table 3.4-3 of the Modesto Municipal Code to permit a camouflaged monopine cellular tower of 75-feet in height, located within the Low Density Residential (R-1) Zone on non-residential City of Modesto Parks and Recreation property located on Neece Drive east of Rouse Avenue, was filed by Vertical Bridge on April 2, 2021; and

WHEREAS, Title 10, Chapter 9, Article 6 of the Modesto Municipal Code authorizes the Board of Zoning Adjustment to grant variances, and Section 10-3.407(d) of the Modesto Municipal Code provides that the Board of Zoning Adjustment may grant a variance for the maximum allowed height of a cellular facility subject to findings specified in Section 10-3.407(c); and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on May 27, 2021 in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered.

WHEREAS, this matter is exempt under Section 15303 of the CEQA Guidelines, Construction or Conversion of Small Structures, under which subsection (d) exempts water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

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 radio frequency technology circumstances or conditions applicable to the property or building in question which do not exist for other properties or buildings within a radius of two thousand (2,000) feet from the proposed facility site.

The site is located in the Low Density Residential (R-1) Zone and is used as a park by the City of Modesto Parks and Recreation Department. The surrounding area is zoned R-1 and is used for residential purposes. The park is a suitable location versus other single-family residential parcels within the 2,000 foot radius of the site.

2. The special radio frequency technology circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of his ability to close a demonstrated significant gap in coverage or service in its own network coverage using the least intrusive means.

Propagation maps and a project summary provided by the applicant demonstrate that the installation of the 75-ft camouflaged monopine cellular tower would improve service to the surrounding neighborhood including the industrial areas of Zeff Road, Crows Landing Road and the nearby Aspire Vanguard College Preparatory Academy charter school, and share cellular traffic load from congested neighboring sites. Impacts without the 75-ft tower would be demonstrably less coverage in the Rouse Avenue neighborhood and nearby industrial buildings in the area with a 50-foot tower as opposed to a 75-foot tower.

3. Granting the variance will be consistent with the intent and purpose of this Chapter and the Federal Communications Act of 1996 (Public Law 104-104).

The intent and purpose to provide services including emergency services is within the FCC intent of the Communications Act of 1996.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Vertical Bridge a variance from the provisions of Section(s) 10-3.406 Table 3.4-3 of the Modesto Municipal Code to permit a camouflaged monopine cellular tower of 75-feet in height, at property located on Neece Drive east of Rouse Avenue, subject to the following conditions:

4. All development shall conform to the plans titled "US-CA-7047 Thurman Neece Dr. Modesto, CA 95351" as stamped approved by the Board of Zoning Adjustment on May 27, 2021.
5. All fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
6. Prior to issuance of a building permit, plans and technical data sheets shall be submitted to the Fire Marshall or designee for review. Plans and data sheets shall include but not be limited to the following:
 - a. Fire extinguisher systems;
 - b. On-site generators;
 - c. Compressed gasses and/or fuel storage systems.
7. Prior to placement of any stationary lead-acid battery systems or on-site generators, a permit shall be obtained from the Fire Department.

8. The property owner and developer shall, at their sole expense, defend, 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 and shall cooperate fully in the defense.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on June 24, 2021, by Board Member Vohra, who moved its adoption, which motion was seconded by Board Member Desai and carried by the following vote:

Ayes:	Blom, Desai, Goriel, Rodriguez, Vohra
Noes:	None
Absent:	None
Recused:	None

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

Original, signed copy on file in CEDD

Steve Mitchell, Secretary