

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2016-06

A RESOLUTION DENYING AN APPLICATION FOR A VARIANCE FROM THE
REQUIRED SIDE YARD SETBACK ON PROPERTY LOCATED AT 1102
ALAMO AVENUE (EDUARDO LEMUS)

WHEREAS, an application for a variance from the provisions of Section(s) 10-4.102, Table 4.1-1 Residential Development Standards of the Modesto Municipal Code to allow a house to be located closer than the required five-foot side yard setback on property located at 1102 Alamo Avenue, was filed by Eduardo Lemus on March 11, 2016; and

WHEREAS, Sections 10-1.302(a) and 10-9.601 of the Modesto Municipal Code authorizes the Board of Zoning Adjustment to grant or deny variances subject to findings specified in Section 10-9.602; and

WHEREAS, there are no special circumstances or conditions applicable to this property since this property is similar in square footage to many of the surrounding properties; if the building had been damaged by accidental or natural causes, such as fire, the house would have been allowed to be reconstructed in the existing location and footprint by obtaining a rebuild permit; however, the owner demolished the house without obtaining a demolition permit and rebuilt the house at the same location without submitting plans or obtaining permits; and

WHEREAS, requiring the five foot side yard setback would not deprive the applicant of practical use of the property because the lot size is about 8,250 square feet, far above the minimum lot size required for single-family residential corner lots, which requires a minimum lot size of 5,500 square feet; there is ample room to relocate the house away from the interior side yard property line; and

WHEREAS, the granting of this variance will be inconsistent with the intent and purpose of Title 10 of the Municipal Code and will be detrimental to the neighborhood because the purpose of the five foot side yard setback is to ensure that adequate light, air, privacy and open space is provided for between Residential uses, and provide fire access to the side yard; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on April 28, 2016 in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which 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 no special circumstances or conditions applicable to this property, because this property is similar in square footage to many of the surrounding properties;
2. Requiring the five foot side yard setback would not deprive the applicant of practical use of the property, because the lot size is about 8,250 square feet, far above the minimum lot size required for single-family residential corner lots, which requires a minimum lot size of 5,500 square feet; there is ample

room to relocate the house away from the interior side yard property line, in full compliance with the five foot side yard setback;

3. The granting of this variance would be inconsistent with the intent and purpose of Title 10, because as one of the important factors included in the purpose and intent of the Residential Zoning Districts setback requirements is to ensure that adequate light, air, privacy and open space is provided for between Residential uses. A minimum setback of five feet from the side yard property line is also meant to provide access to the side yard for fire access (should the need arise). Therefore, as a whole, staff cannot find the basis for grounds of approval, and recommends that the Board deny the attached resolution granting the requested variance.
4. All findings in the staff report and in staff's presentation for this item are incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it hereby finds and determines that the findings for granting a variance cannot be made as required in Section 10-9.602 of the Modesto Municipal Code, because there are no special circumstances or conditions applicable to this property which do not exist for other property in the same zone and immediate vicinity, and strict application of setback provisions would not deprive the applicant of practical use of the property in question.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the application of Eduardo Lemus representing Ricardo Garcia for a variance from the required side setback be denied.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment on April 28, 2016, by Hank Pollard, who moved its adoption, which motion was seconded by Robert Selover, and carried by the following vote:

Ayes:	Pollard, Rodriguez, Selover, Vohra, Matas
Noes:	None
Absent:	Morris
Recused:	None

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

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