

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2017-01

A RESOLUTION GRANTING A VARIANCE FROM THE 5 FOOT REAR YARD SETBACK FOR A NEW TWO-STORY SECONDARY DWELLING UNIT PROPOSED ON THE REAR PROPERTY LINE OFF THE ALLEY ON PROPERTY LOCATED AT 935 MAGNOLIA AVENUE

WHEREAS, an application for a variance from the provisions of Section 10-4.102 of the Modesto Municipal Code to permit construction of a new two-story secondary dwelling unit within the required 5 foot rear yard setback proposed on the rear property line off the alley on property located at 935 Magnolia Avenue, was filed by Sam Garrett on December 12, 2016; 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 January 26, 2017, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed variance is exempt from CEQA, pursuant to Section 15305 (a) of the CEQA Guidelines, which exempts one single-family residence, or a second dwelling unit in a residential zone, and minor lot line adjustments, 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 building in question which do not exist for other property or buildings in the same zone and immediate vicinity. This neighborhood was developed prior to the adoption of the City of Modesto Zoning Code. Because of this, there are existing garages built within the required 5 foot setback, on the rear property line, some with accessory dwelling units on the second floor. There is a pool located at the center of the back yard. The pool's size and location would make it very difficult to place a second unit elsewhere on the lot in compliance with required setback provisions. In addition, this lot is bounded on the west by an alley which provides a physical buffer from the western neighbor. This minimizes the impact of such a proposal. The Board has, as recently as 2013, approved variances that are similar in nature and scope.
2. The special circumstances or conditions are such that strict application of the provisions of Section 10-4.102 of Title 10 of the MMC, would deprive the applicant of practical use of the property or buildings. This proposal requests that the applicant build a two car garage with a second story accessory dwelling unit above. This unit is being built where the current accessory building is located. Because of this, the improvements leading to the new garage currently exist. The applicant is proposing to continue

using these improvements, including driveway apron, driveway and parking area for the primary dwelling unit. In addition, a pool exists at the middle, rear of the property. Its size and location make it difficult to site this unit elsewhere without deviating from the required setback.

- 3. Granting the variance will be consistent with the intent and purpose of the provisions of Section 10-4.102 of Title 10 of the MMC and will not be detrimental to the neighborhood or public welfare. The proposed project is generally consistent with the character of the older neighborhood. There are other properties nearby which have accessory structures and secondary dwelling units, some of them built above garages, built within required setbacks. The proposed two-story second-unit is not immediately adjacent to the existing dwelling on site, but instead, sits at the southwest corner, at the rear of the property, and will not be immediately noticeable from Magnolia and W. Fairmont Avenues. The applicant has placed the second-story dwelling's windows facing north, thereby not infringing on the privacy of neighboring properties. This placement represents minimal impact to the neighborhood and privacy issues. In addition, this lot is bounded on the west by an alley which provides a physical buffer from the western neighbor. This minimizes the impact of such a proposal.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Sam Garrett a variance from the provisions of Section 10-4.102 of the Modesto Municipal Code entitled "Development Standards" to permit construction of a new two-story secondary dwelling unit proposed on the rear property line off the alley on property located at 935 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 January 26, 2017, 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 January 26, 2017, by Board Member Blom, who moved its adoption, which motion was seconded by Board Member Vohra and carried by the following vote:

Ayes: Blom, Moradian, Selover, Morris, Vohra  
 Noes: None  
 Absent: Rodriguez  
 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