I. **ROLL CALL**

II. **FIELD TRIP**

There will be a field trip to allow the Board to view property to be discussed at the regular meeting later in the day. Interested parties may join the Board at any of the properties at the approximate times shown below. Statements on the merits of an application are inappropriate on a field trip and should be made at the regular meeting. The regular meeting is on February 27, 2020, 10:00 am in Chambers. The agenda for the regular meeting is attached.

9:05 am Leave Tenth Street Place to View Property

9:20 am Property Located at 206 Rowland Avenue

Item A
(Commercial Architecture)

III. **ADJOURNMENT**

Posted pursuant to Government Code Section 54956 on ______________________ at ________

by ________________________________ on the bulletin board at Tenth Street Place.
I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of November 21, 2019.

III. CONFLICT OF INTEREST DECLARATION

Board members and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. PUBLIC HEARINGS

Item A VAR-19-003 – A Variance from the Side Yard Setback Requirement, for a single-family residence located at 206 Rowland Avenue (Commercial Architecture)
Contact Info: Katharine Martin, 577-5267, kamartin@modestogov.com

V. OTHER BUSINESS

None.

VI. ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Board Member (see Notice at end of agenda cover). Under State law, the Board may respond to matters being presented under this item only as follows:

(a) Briefly respond to statements made or questions raised.
(b) Ask a question for clarification.
(c) Provide a reference to staff or other resources for factual information.
(d) Request staff to report back at a subsequent meeting.
(e) Finally, a Board member, or the Board itself, may take action to direct staff to place a matter of business on a future agenda.

VII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Board of Zoning Adjustment and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City’s attention after the agenda was posted.
VIII. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the Office of the Planning Division, third floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board of Zoning Adjustment Secretary (209) 577-5267. Assistive listening devices are available upon request to the BZA Secretary. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the BZA regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to provide additional information to you. Signing this form is optional to speakers.

Posted pursuant to Government Code Section 54954.2 on ______________________ at_______

by____________________________ on the bulletin board at Tenth Street Place.
At the Board Members’ request, staff has compiled a list of individuals having a personal/financial interest in the matters contained in the accompanying agenda report to assist in identifying potential conflicts of interest.

**ITEM A**  
**VAR-19-003 – A VARIANCE FROM THE SIDE YARD SETBACK REQUIREMENT, FOR A SINGLE-FAMILY RESIDENCE LOCATED AT 206 ROWLAND AVENUE**

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Name/Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>Scott &amp; Renee Barnett, 206 Rowland Avenue, Modesto, CA 95354</td>
</tr>
<tr>
<td>Applicant</td>
<td>Stacey Wellnitz, 616 14th Street, Modesto, CA 95354</td>
</tr>
</tbody>
</table>
Minutes
Board of Zoning Adjustment Field Trip
November 21, 2019, 9:00 AM

The Board of Zoning Adjustment of the City of Modesto met in special session on Thursday, November 21, 2019, in the Lobby, 1010 Tenth Street, Modesto, California. The meeting was called to order at 9am am.

Members Blom, Goriel, Rodriguez and Selover present

FIELD TRIP

The Board Members and Paul Liu, Principal Planner, proceeded on a field trip as scheduled and viewed the following properties:

Property Located at 3233 Esta Ave. (Jean)

ADJOURNMENT

The meeting adjourned at 9:55 am.

Original, signed copy on file in CEDD
Steve Mitchell, Secretary
City of Modesto Board of Zoning Adjustment

Minutes
November 21, 2019

Being the hour of 10:00 am, the meeting was called to order by Chairperson Rodriguez.

I. ROLL CALL

Board Members Blom, Goriel, Roddick, Rodriguez, Selover and Vohra present
Board Member Moradian absent

MOTION

It was moved by Board Member Vohra, seconded by Board Member Roddick, and carried unanimously that Board Member Moradian be excused from this meeting.

II. APPROVAL OF MINUTES

It was moved by Board Member Goriel, seconded by Board Member Selover, and carried unanimously that the minutes of the regular meeting of September 26, 2019, be approved.

III. CONFLICT OF INTEREST DECLARATION

None

IV. PUBLIC HEARINGS

Item A  VAR–19-002  A variance for a house addition to encroach 4 feet 1 inch into the required 15 foot street side setback located 3233 Esta Avenue; submitted by Thaddeus Jean
Contact Info: Jonnie Lan, 577-5267, jlan@modestogov.com

Motion/Action (Approved)

It was moved by Board Member Vohra, seconded by Board Member Goriel, and carried by majority (Blom, Goriel, Roddick, Selover, Vohra, Rodriguez, ayes; None, noes; Moradian, absent; None, recused) that the Board of Zoning Adjustment adopt Resolution No. 2019-08 A RESOLUTION GRANTING A VARIANCE TO THADDEUS JEAN FOR AN ADDITION TO A HOUSE TO ENCROACH 4 FEET, 1 INCH INTO THE REQUIRED 15 FOOT STREET SIDE SETBACK PROPERTY LOCATED AT 3233 ESTA AVENUE

V. OTHER BUSINESS

Item B  2020 PC/BZA/LPC Meeting Schedule

Motion/Action (Approved)

It was moved by Board Member Goriel, seconded by Board Member Vohra, and carried by majority (Blom, Goriel, Roddick, Vohra, Selover, Rodriguez, ayes; None, noes; Moradian, absent; None, recused) that the Board of Zoning Adjustment adopt the 2020 PC/BZA/LPC Meeting Schedule.
Item C Election of Chair and Vice Chair

Motion/Action (Approved)
It was moved by Board Member Vohra, seconded by Board Member Goriel, and by majority (Blom, Goriel, Roddick, Vohra, Selover, Rodriguez, ayes; None, noes; Moradian, absent; None, recused) that the Board of Zoning Adjustment appoint Board Member Vohra as 2020 BZA Chair.

Motion/Action (Approved)
It was moved by Board Member Goriel, seconded by Board Member Vohra, and carried by majority (Blom, Goriel, Roddick, Vohra, Selover, Rodriguez, ayes; None, noes; Moradian, absent; None, recused) that the Board of Zoning Adjustment appoint Board Member Goriel as 2020 BZA Vice Chair.

VI. ORAL COMMUNICATIONS

None

VII. MATTERS TOO LATE FOR THE AGENDA

None

VIII. ADJOURNMENT

The meeting was adjourned at 10:14 am.

Original, signed copy on file in CEDD
Steve Mitchell, Secretary
RECOMMENDATION

Resolution granting a variance from the side yard setback requirements to allow a single-family residential expansion to attach to an existing detached garage building with a zero side yard setback, property located at 206 Rowland Avenue.

BACKGROUND

The property at 206 Rowland Avenue contains a single-family residence and a detached garage building, both constructed in 1939 prior to the enactment of zoning standards in 1955. The residence was constructed with zero side yard setback on the north property line, and its detached garage with 10-foot wide driveway from Rowland Avenue was constructed with a zero side yard setback along the south property line.

On December 17, 2019, Commercial Architecture on behalf of the property owners applied for a variance to allow for a new second-story expansion that would connect the main residence to the detached garage.

PROJECT DESCRIPTION

Since the residence was constructed in 1939 prior to the enactment of the Zoning Code and its setback standards, its placement is considered legal but non-conforming. Under the current setback standards, the main residence and detached garage are required to have five-foot side yard setbacks.

The property owner seeks to construct a two-story addition to the existing single-family residence that would connect the residence to the detached garage. Although the footprint of the expansion does adhere to all current setback standards for the first and second stories, connecting the existing residence to the existing garage would add to the non-conformity of setbacks due to the attachment of the garage to the main dwelling. However, altering the existing garage to conform to the five-foot side yard setback standard would narrow the garage door width and inhibit use of the garage’s street facing entrance. Therefore, the owner therefore seeks a variance from the side yard setback standards to allow the addition to connect to the existing garage at its current position, in order to maintain street access to the garage.
APPLICABLE CODE PROVISIONS

Table 4.1-1 of Title 10, Chapter 4 (Residential Development Standards) provides that the interior side yard setback of buildings (except garage, carport or parking space) within the Low Density Residential (R-1) Zone be five (5) feet from the side property line.

ANALYSIS

The project initially came to City staff as a request for a Second-Story Review, required by Section 10-4.110 of the Modesto Municipal Code (MMC) which specifies that all new two-story dwellings and accessory buildings and all second-story additions to an existing dwelling are subject to such review in accordance to Chapter 9, Article 10 of the MMC. The process involves review of the project by staff for compatibility with the Neighborhood Compatibility Guidelines, as well as review of whether or not new second-story windows or balconies provide active views into neighboring rear yard and actively used side yards. Upon analysis of the proposed second-story addition, staff determined that the addition adheres to all current second-story setback standards, views towards neighboring yards to the east are limited and views into yards to the north and south are restricted, and that the plan otherwise conforms to the Neighborhood Compatibility Guidelines.

However, since the proposal involves connecting the main residence to the existing garage, a Variance is required with consideration by the Board of Zoning Adjustment in a public hearing.

Section 10-9.601, Article 6 (Variances) of the Municipal Code states that: “The sole purpose of a variance shall be to prevent discrimination, and no variance shall be granted which would have the effect of granting a special privilege not shared by other property in the same zone and immediate vicinity.”

The applicant has provided specific reasons for making the required findings for a variance (see attached Variance Questionnaire). Staff believes that the required findings to approve a variance can be made for the following reasons:

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. The applicant states: “The location of the existing driveway and curb cut align with the garage in its current location. Relocating the garage will make access from this driveway difficult.”

The residence and its detached garage were constructed in 1939, prior to the establishment of setback standards with the zoning code in 1955. The garage’s street-facing entrance is accessed via a driveway of approximately ten feet in width, also positioned with a zero setback along the south property line. Reducing the width of the existing garage to meet the five foot setback standard would inhibit access to its entrance from the existing driveway.

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. The garage, driveway and curb-cut approach from the street were constructed with a zero side-yard setback alongside the footprint of the existing single-family residence. Due to the position of the existing home, the driveway could not be moved five feet to the north to line up with the garage if the garage were relocated to the current five-foot side yard setback standard. Therefore, strict application of the setback standard would inhibit the continued use of the existing driveway into the garage’s entrance.

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.
There are neighboring properties with similar substandard garage setbacks, and the footprint of the expansion area would otherwise conform to the current side and rear yard setback standards.

Based on the findings presented above, staff supports the variance application and recommends that the Board approve the variance request.

ENVIRONMENTAL ASSESSMENT

The proposed variance is exempt from CEQA, pursuant to Section 15305(a) of the CEQA Guidelines, which exempts minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Board of Zoning Adjustment Resolution – February 27, 2020
2. Statement of Exemption EA/C&ED No. 2020-01
3. Financial Interest Disclosure Form
4. Large-Format Map
PROPOSED VARIANCE FOR SIDE YARD SETBACK
206 ROWLAND AVE
VAR-19-003
FLOOR PLANS
206 ROWLAND AVE
VAR-19-003
A RESOLUTION GRANTING A VARIANCE FROM THE SIDE YARD SETBACK REQUIREMENTS TO ALLOW A SINGLE-FAMILY RESIDENTIAL EXPANSION TO ATTACH TO AN EXISTING DETACHED GARAGE BUILDING WITH A ZERO SIDE YARD SETBACK, PROPERTY LOCATED AT 206 ROWLAND AVENUE (COMMERICAL ARCHITECTURE)

WHEREAS, the property located at 206 Rowland Avenue contains an existing single-family residence with a detached garage building, said detached garage constructed with a zero side yard setback; and

WHEREAS, an application for a variance from the five-foot side yard setback requirement provided in Title 10, Chapter 4, Table 4.1-1 of the Modesto Municipal Code to permit an expansion of the existing single-family residence to attach to the existing detached garage with zero side yard setback was filed by Commercial Architecture on behalf of Scott and Renee Barnett on December 17, 2019; 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 February 27, 2020 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 pertains to minor lot-line adjustments, side yard, and setback variances not resulting in the creation of any new parcels, as being exempt from CEQA under Section 15305(a) of the CEQA guidelines.

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. The existing residence and detached garage were constructed in 1939, prior to the establishment of setback standards set forth in the Modesto Municipal Code. The garage and street-facing driveway are positioned with a zero setback along the south property line. Reducing the width of the existing garage to meet the five foot setback standard would inhibit access to its entrance from the existing driveway.
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 garage, driveway and curb-cut approach from the street were constructed with a zero side-yard setback alongside the footprint of the existing single-family residence. Due to the position of the existing home, the driveway could not be moved five feet to the north to line up with the garage if the garage were relocated to the current five-foot side yard setback standard. Therefore, strict application of the setback standard would inhibit the continued use of the existing driveway into the garage’s entrance.

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 are neighboring properties with similar substandard garage setbacks, and the footprint of the expansion area would otherwise conform to the current side and rear yard setback standards.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Commercial Architecture on behalf of Scott and Renee Barnett a variance from the provisions of Title 10, Chapter 4, Table 4.1-1 of the Modesto Municipal Code to permit the expansion of the existing single-family residence to attach to an existing detached garage building with zero side yard setback, subject to the following conditions:

1. Prior to the issuance of a building permit, construction shall conform to the site plan and elevations stamped approved by the Board of Zoning Adjustment on February 27, 2020.

2. There is an existing water connection to the 8-inch main in the alley to this site. It is recommended to use an on-site connection to the proposed addition. If an additional connection or an upgrade to the existing connection is required, then water connection fees shall be paid and an encroachment permit obtained from the City prior to any work being done in the public right-of-way.

3. There is an existing sewer connection from the 6-inch main in the alley to this site. The proposed addition shall connect to the existing on-site sewer service. The City will not allow a separate sewer connection from the main to the same lot.

4. All landscaping and walls shall be maintained and the premises shall be kept free of weeds, graffiti, trash, and other debris.

5. The property owner and developer shall, at their sole expense, defend, with counsel selected be 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 February 27, 2020, 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 February 27, 2020, by , who moved its adoption, which motion was seconded by and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

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

Original, signed copy on file in CEDD

Steve Mitchell, Secretary
NOTICE OF EXEMPTION
Environmental Assessment No. EA/C&E 2020-01

Project Title: VAR-19-003: Variance application for an expansion of an existing single-family residence to exceed required 5-foot side yard setback.

Project Location: The project is located in Stanislaus County within the City of Modesto, at 206 Rowland Avenue

Project Description: This is an application for a variance to allow the expansion of an existing single-family residence to attach to an existing detached garage constructed with zero side yard setback, thereby encroaching into the required 5-foot side yard setback.

Public Agency Approving Project: City of Modesto

Applicant (Appellant): Commercial Architecture, 616 14th Street, Modesto CA 95354

Section of CEQA Under Which Project is Exempt: CEQA Guidelines Sections 15305(a)

Reasons Why Projects are Exempt: The project is exempt from CEQA because 15305(a) exempts minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel.

Contact Person: Katharine Martin 209.577.5267

Signature

Date: February 11, 2020
Title: Senior Planner
FINANCIAL INTEREST DISCLOSURE FORM GUIDELINES

City ordinance requires that all individuals with a material interest in a decision of the City Council must be disclosed. The following is for your assistance in completing the attached disclosure form:

1. For all of the below, corporate names/LLC’s/limited partnerships are not acceptable in and of themselves, all individuals with an interest of $2000 or more must be disclosed in these cases.

2. Individuals with a material interest include all property owners.

3. Individuals with a material interest include any developer.

4. Individuals with a material interest include any architect, engineer, or other design professional.

5. Individuals with a material interest include the applicant’s attorney or other representative.

6. Individuals with a material interest include any real estate agent who is party to the transaction.

7. Individuals with a material interest include any contractor constructing the project for which the contract has been arranged by the time of the hearing.

The above is for guidance only and not an inclusive list of all individuals at interest. You have a responsibility to determine and list all individuals in accordance with the Tests of Materiality as set forth on the attached.
FINANCIAL INTEREST DISCLOSURE FORM

All persons included within the meaning of either of the following tests have a material financial interest in an agreement, or application for development rights, submitted for approval or disapproval by the City Council, and shall be identified by the applicant, by name.

Tests of Materiality:

1. Whether it is foreseeable to a reasonable person that the value of their interest in property available for use by an applicant, or their interest in the applicant itself, may increase or decrease by an amount greater than $2,000.00 as a direct or indirect result of Council action on the applicant's agreement or application for development rights.

2. Whether it is foreseeable to a reasonable person that the person's gross income from the applicant may increase or decrease by a sum greater than $2,000.00 as a direct or indirect result of Council action on the agreement or application for development rights.

It is the legal obligation of all applicants for approval of an agreement or of an application for development rights to verify in writing, under penalty of perjury, that the identity of each person having a material financial interest in the agreement or application or development rights is true, correct and complete. The applicant understands that this information is provided under penalty of perjury, and that intentionally supplying misinformation or deception may result in either invalidation of the agreement or application, or criminal prosecution for misdemeanor violation of the Modesto Municipal Code, or both. Negligent provision of misinformation shall be grounds for invalidation. In accordance with the Modesto Municipal Code, each applicant has a continuing obligation to maintain the truth, accuracy and completeness of the financial interest disclosure information provided below until after final consideration by the City Council of any matter arising out of or relating to the agreement or application.

PROJECT: 206 ROWLAND AVE

APPLICANT SIGNATURE

STACEY WELLNITZ

APPLICANT NAME (type or print)

Updated: 7/23/09
NAMES

Property Owner(s) – (Please list name of company and names of individual names of said company)
SCOTT BARNETT
RENEE BARNETT

Developer(s) – (Please list name of company and names of individual owner(s) of company)

Architect(s), Engineer(s) or Other Design Professional(s) – (Please list name of company and names of individual owner(s) of company)
COMMERCIAL ARCHITECTURE, THEODORE BRANDVOLD

Attorney(s) or Representative(s) – (Please list name of company and names of individual owner(s) of company)

Real Estate Agent(s) – (Please list name of company and names of individual owner(s) of company)

Contractor(s)

Other – (Investors, Trustees, etc.)