

BOARD OF ZONING ADJUSTMENT
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

WHEREAS, an application for a variance from the provisions of Section(s) 10-4.102 of the Modesto Municipal Code to allow an addition to a house to encroach 4 feet, 1 inch into the required 15 foot street side yard setback at 3233 Esta Avenue was filed by Thaddeus Jean on September 23, 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 10-9.102; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on November 21, 2019, 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 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 buildings in question which do not exist for other property or buildings in the same zone and immediate vicinity because at the recordation of the Tarantella Estates Subdivision Map, and its accompanying right-of-way dedication, the existing house was approved with a 10 foot, 11 inch setback from the street side property line along Hillglen Avenue. The reduced setback was due to Hillglen Avenue alignment established by the development to the east. The reduced setback is not currently noticeable. The reason is due to the fact that Hillglen Avenue is not improved as a street because right-of-way needed from the parcel to the north was not available. Obtaining the right-of-way for Hillglen Avenue, plus the funding for street improvements, will likely take many years.
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. Based on the current floorplan, adhering to the required setback would limit the ability of the applicant to design an addition to the house with proper internal flow. The applicant requests to build the addition at the same setback as the existing part of the house.
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 the setback will not be any different than what exists with the current house.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Thaddeus Jean a variance from the provisions of Section (s) 10-4.102 of the Modesto Municipal Code to permit an addition to a house to encroach 4 feet, 1 inch into the required 15 foot street side yard setback subject to the following conditions:

1. All landscaping and walls shall be maintained and the premises shall be kept free of weeds, graffiti, trash, and other debris.
2. The property owner will obtain a building permit for any new structures.
3. All new structures will be subject to the most current adopted building code at the time of construction.
4. 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 November 21, 2019, 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 November 21, 2019, by Board Member Vohra, who moved its adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

Ayes:	Blom, Goriel, Roddick, Selover, Vohra, Rodriguez
Noes:	None
Absent:	Moradian
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