

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2017-03

A RESOLUTION GRANTING A VARIANCE FOR A NEW 720-SQUARE FOOT GARAGE TO ENCROACH 7.5-FEET WITHIN THE 7.5-FOOT STREET SIDE-YARD SETBACK REQUIREMENT, PROPERTY LOCATED AT 201 POPLAR AVENUE (LESLIE HOEGH)

WHEREAS, an application for a variance from the provisions of Section 10-4.106 (d) of the Modesto Municipal Code to permit construction of a new garage within the 7.5-foot street-side setback at 201 Poplar Avenue was filed by Leslie Hoegh on December 29, 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 February 23, 2017 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 15303(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, because the existing residence and surrounding residences pre-date current setback requirements. The previous garage was placed in the same location proposed for the new garage, and other homes nearby have accessory structures at the property line or well within the required 7.5-foot street side-yard setback area.
2. The special circumstances or conditions are such that strict application of the provisions of MMC Sections 10-4.106(d) would deprive the applicant of practical use of the property or buildings, because if the garage were to be built with the 7.5-foot setback from Alice Street, an existing gas line would require relocation.
3. Granting the variance will be consistent with the intent and purpose of MMC Sections 10-4.106(d) and will not be detrimental to the neighborhood or public welfare because the proposal would replace a 1910-built garage that has since been demolished, allow for the reuse of the existing Alice Street driveway approach, and would not affect the surrounding neighborhood as there are existing garages and accessory units with similar setbacks in the immediate proximity to the property.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Leslie Hoegh a variance from the provisions of Section 10-104(d) of the Modesto Municipal Code to permit construction of a new garage within the 7.5-foot street-side setback area, subject to the following conditions:

- 1. Prior to the issuance of a building permit, the garage construction shall conform to the site plan stamped approved by the Board of Zoning Adjustment on February 23, 2017.
- 2. In no case shall any portion of the garage structure overhang a property line. All construction documentation shall clearly demonstrate the location of the property lines and the placement of the garage structure fully within the property.
- 3. All landscaping and walls shall be maintained and the premises shall be kept free of weeds, graffiti, trash, and other debris.
- 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.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on February 23, 2017, by Board Member Rodriguez, who moved its adoption, which motion was seconded by Board Member Moradian and carried by the following vote:

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

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

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