

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2019-02

A RESOLUTION GRANTING A VARIANCE TO JEREMIAH SHARP TO PERMIT A NEW ATTACHED PATIO COVER TO ENCROACH 3 TO 4 FEET WITHIN THE REQUIRED 15 FOOT STREET-SIDE YARD SETBACK, PROPERTY LOCATED AT 3400 LAUDING WAY

WHEREAS, an application for a variance from the provisions of Section(s) Section 10-4.102 of the Modesto Municipal Code to permit construction of a new attached patio cover within the 15-foot street-side yard setback at 3400 Lauding Way was filed by Jeremiah Sharp on April 10, 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 May 23, 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 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 pool takes up most of the usable rear yard. The edge of the pool is approximately seven feet from the 15 foot street-side setback. In order to add a patio cover that provides significant shade to the rear yard from the afternoon sun, the patio cover will need to encroach into the street-side yard setback. There are other properties nearby that have structures built within the required 15 foot street-side yard setback
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. The property owner could not build the patio cover if he was required to meet the setback because a large pool sits in the center of the rear yard. The patio cover placed at the required setback would result in minimal shade because of the existing pool's location.
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 proposal would not have a detrimental affect on the surrounding neighborhood as there are existing structures and dwellings with similar setbacks in proximity to the property.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Jeremiah Sharp a variance from the provisions of Section (s) 10-4.102 of the Modesto Municipal Code to permit a new attached patio cover to encroach 3 to 4 feet within the required 15 foot street-side yard setback subject to the following conditions:

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 will obtain a building permit for any new structures.
6. All new structures will be subject to the most current adopted building code at the time of construction.
7. 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 May 23, 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 May 23, 2019, by Board Member Selover, who moved its adoption, which motion was seconded by Board Member Moradian and carried by the following vote:

Ayes: Blom, Goriel, Moradian, Roddick, Selover, 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 CED

Steve Mitchell, Secretary