

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2017-04

A RESOLUTION GRANTING A VARIANCE FOR A ONE-STORY ADDITION TO A SINGLE FAMILY RESIDENTIAL UNIT TO ENCROACH 2 FEET 4 INCHES INTO THE REQUIRED 5 FOOT SIDE YARD SETBACK LOCATED AT 517 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 one-story addition to a single family residential unit to encroach 2 feet 4 inches into the required 5 foot rear yard setback on property located at 517 Magnolia Avenue, was filed by Doug and Melissa Van Diepen on January 12, 2017; 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; 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 houses and accessory buildings built within the required 5 foot side yard setback. The existing residence, which was built prior to adoption of current setback regulations, is built at 2 foot 8 inches from the side property line. The variance would allow the addition to have the same setback.
- 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. Currently the north side of the existing house is setback is 2 feet 8 inches from the property line. Because of the current location of the laundry and kitchen, requiring the addition to observe the required 5 foot side yard setback would restrict the applicant from adding the additional square footage to their master bedroom.
- 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. The dwelling unit's northern wall is currently built within the 5 foot required setback. In addition,

there are other properties nearby, including next door, which are built within the required side yard setback. These dwelling units are considered legal nonconforming.

BE IT RESOLVED by the Board of Zoning Adjustment that it grants to Dough and Melissa Van Diepen a variance from the provisions of Section 10-4.102 of the Modesto Municipal Code to permit construction of a one-story addition within the required 5 foot setback on property located at 517 Magnolia Avenue, subject to the following conditions:

1. Prior to the issuance of a building permit, the construction shall conform to the site plan stamped approved by the Board of Zoning Adjustment on February 23, 2017.
2. Building shall be single-story with no more than sixteen feet in height from grade to the top plate line.
3. In no case shall any portion of the addition overhang the property line. All construction documentation shall clearly demonstrate the location of the property lines and the placement of the addition fully within the property.
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:	Blom, Moradian, Morris, Rodriguez, Vohra
Noes:	None
Absent:	Selover
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