

PLANNING COMMISSION
RESOLUTION NO. 2017-19

A RESOLUTION DENYING THE APPEAL OF FELIPE AND JENNIFER CASALDUC OF A DETERMINATION BY THE COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR THAT A STRUCTURE BEING CONSTRUCTED AT 2260 MABLE AVENUE IS NOT A LEGALLY PERMISSIBLE ACCESSORY STRUCTURE

WHEREAS, on February 10, 2017 the Code Enforcement Division of the Community and Economic Development Department observed the construction of a two-story structure without the required building permits, inspections and approvals by Building Safety on residential property located within the Existing Very Low Density Residential (EVLDR) land use zone of the Tivoli Specific Plan at 2260 Mable Avenue, and deeming the structure unsafe and a public nuisance, a Notice and Order to stop all work and remove the structure was issued; and

WHEREAS, the property owners, Felipe and Jennifer Casalduc, applied for a building permit for the structure on March 2, 2017, stating that the structure was a 2,264 square foot two-story expansion of an existing 1,568 square foot two-story accessory storage building, comprising a total of 3,382 square feet; and

WHEREAS, the Tivoli Specific Plan does not contain regulations regarding accessory structures. However, Sec. 3.1.2 of the Specific Plan states that if a use is not specified in the Specific Plan, the uses allowed in the equivalent zone in the City's Zoning Ordinance, in this case, the R-1 Zone, apply; and

WHEREAS, Section 10-2.102 defines Accessory Building, Structure and Use as a building, structure or use that is subordinate to, and the use of which is incidental to, that of the main building structure or use on the same lot; and

WHEREAS, the main building and use on the lot is a 3,199 square foot single-story residence; and

WHEREAS, Section 10-3.201 provides that accessory uses and buildings customarily incidental to permitted and conditional uses are permitted, and cites examples of residential accessory buildings such as storage sheds and detached carports or garages; and

WHEREAS, by letter dated April 24, 2017 to Felipe Casalduc, the Community and Economic Development Director determined that the structure is not an accessory building as allowed by Section 10-3.201 of the City's Zoning Code because the two-story structure was substantial in size compared to typical residential accessory buildings, and that the structure appeared from its floor plan and configuration to be intended for a non-residential use, said letter also informing Mr. Casalduc of his right to appeal the Director's decision to the Planning Commission; and

WHEREAS, on May 3, 2017, Felipe and Jennifer Casalduc submitted to the Secretary of the Planning Division an appeal of the Director's decision; and

WHEREAS, a public hearing was held by the Planning Commission on July 3, 2017, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, at the request of the appellant, the public hearing was continued to the July 17, 2017, Planning Commission meeting; and

WHEREAS, a public hearing was held by the Planning Commission on July 17, 2017, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines that the 3,832 square foot two story structure does not meet the definition of an accessory structure, because it is not subordinate and incidental to the dwelling unit, and due to its size, configuration and floor plan, is not a residential accessory structure as allowed by Section 10-3.201(a) of the City of Modesto Zoning Code, and therefore must be removed.

BE IT FURTHER RESOLVED by the Planning Commission that it hereby denies the appeal of Felipe and Jennifer Casalduc to the decision by the Director of Community and Economic Development dated April 24, 2017.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on July 17, 2017, by Commissioner Pollard, who moved its adoption, which motion was seconded by Commissioner Morad and carried by the following vote:

Ayes:	Lucas, Morad, Pollard, Escutia-Braaton
Noes:	Birring
Absent:	Smith, Vohra
Recused:	None

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD

Patrick Kelly, Secretary