

**PC RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING VARIANCE (VAR 6759-2017) TO ALLOW AN INCREASE IN DWELLING UNIT DENSITY IN CONJUNCTION WITH THE CONSTRUCTION OF TWO ATTACHED SINGLE-FAMILY UNITS ON PROPERTY LOCATED AT 1028 WEST FERNLEAF AVENUE.**

**WHEREAS**, the applicant, Tim Law, has submitted an application for a Variance (VAR 6759-2017) to allow an increase in dwelling unit density on a property located at 1028 W. Fernleaf Ave.;

**WHEREAS**, the subject property is currently located within the R-2-S (Low Density Multiple Family Residential with Supplemental Overlay) zoning district;

**WHEREAS**, the subject site is designated as an Residential Neighborhood place type in the City's General Plan;

**WHEREAS**, the applicant has concurrently submitted Conditional Use Permit (CUP 4280-2016) to allow the development of two attached single-family residential units;

**WHEREAS**, Section .560 of the Pomona Zoning Ordinance establishes criteria for approval of a Variance;

**WHEREAS**, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on March 8, 2017 concerning Variance (VAR 6759-2017); and

**WHEREAS**, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Planning Commission of the City of Pomona, California, as follows:

**SECTION 1.** The Planning Commission exercising independent judgment finds that the proposed project will not have a significant effect on the environment. Pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is categorically exempt under Section 15332 of the California Public Resources Code, which exempts in-fill developments located in urbanized settings. The Planning Commission finds that the project meets the following criteria listed in the exemption: 1) the proposed project is consistent with the General Plan and Zoning Ordinance of the City; 2) the parcel is smaller than five acres; 3) the project site has no value as habitat for endangered, rare or threatened species; 4) the project will not have significant effects upon the environment; and 5) the site can adequately be served by utilities and public services.

**SECTION 2.** In any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

**SECTION 3.** Pursuant to Section .560 of the Zoning Ordinance, the Planning Commission must make the four findings listed below in order to grant a variance. Based upon a consideration of the whole record before it including, but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds as follows:

1. *That there are special circumstances applicable to the property including but not limited to size, shape, location, topography or surroundings that deprive such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.*

Properties in the vicinity are similarly sized and are developed with two or more residential units. The property in question is slightly undersized to meet the density development standard of the R-2 (Low Density Multiple Family Residential) zone and will otherwise meet or exceed all other development standards.

2. *That the granting of the variance will not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.*

The existing vacant lot is one of the few lots which remain undeveloped in the area. The Variance request is consistent with the existing development on similar properties in the vicinity.

3. *That the granting of the variance will be consistent with the provisions of any Specific Plan, or the adopted General Plan.*

The proposed Variance will allow the applicant to construct two attached single-family residences on a vacant lot. The proposed Variance is consistent with the General Plan place type of Residential Neighborhood. Furthermore, the proposed project is consistent with the following goal 6G.G6 for Residential Neighborhood place types from the General Plan:

*“Ensure that new residential development is well-integrated into adjacent neighborhood street patterns and provided with pedestrian connections”*

4. *That the granting of the variance will not be materially detrimental or injurious to the surrounding properties nor to the general development pattern of the neighborhood.*

The granting of the Variance will not be materially detrimental or injurious to the surrounding properties nor to the general development pattern of the neighborhood in that the property is a vacant lot in a zone which allows for the development of multiple family residential structures.

**SECTION 4.** Based upon the above findings, the Planning Commission hereby approves Variance (VAR 6759-2017) subject to the following conditions:

**PLANNING DIVISION**

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Planning Commission on March 8, 2017, and as illustrated in the stamped approved plans dated March 8, 2017. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Development Services Manager.
2. The applicant shall make reductions of all approved resolutions related to the project, which shall be placed on the title sheet of construction plans prior to the Plan Check submittal.
3. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
4. This approval shall lapse and become void if construction under a valid building permit

has not commenced within two years from the date of this approval (March 7, 2018), in accordance with Pomona Zoning Ordinance section .580.I. The Planning Commission may extend this period for one year upon receipt of an application for a Time Extension request submitted by the applicant at least thirty days before the expiration date of this approval.

5. The project shall be subject to an appeal period of twenty (20) days. Written appeals may be filed with the City Clerk by one or more City Council members, the applicant, or any person owning property within four hundred feet of the exterior boundary of the applicant's property.
6. The Variance (VAR 1536-2015) shall only apply to the reduced rear yard setback of 15 feet and the unlevel 5 foot side yards designed as stairways for the proposed construction of a single-family residence.

**SECTION 5.** The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

**APPROVED AND ADOPTED THIS 8<sup>TH</sup> DAY OF MARCH, 2017.**

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CAROLYN HEMMING  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

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BRAD JOHNSON  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**

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ANDREW JARED  
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA    )  
COUNTY OF LOS ANGELES ) ss.  
CITY OF POMONA         )

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

"Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by Sec. 1094.6 C.C.P."

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