

RESOLUTION NO. 2011-249

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING A VARIANCE FOR 10294 WRANGLER DRIVE
ASSESSOR'S PARCEL NUMBER 134-0460-038**

WHEREAS, the Planning Department of the City of Elk Grove ("City") received an application for a Variance (the "Project") from Joseph & Michelle Henderson ("Applicant") for an accessory structure at 10294 Wrangler Drive; and

WHEREAS, the Project is located on real property in the incorporated portions of the City of Elk Grove more particularly described as Assessor's Parcel Number 134-0460-038; and

WHEREAS, a Building Permit (07-3556) was issued to Applicant for a second dwelling unit by the Building Department on or about August 28, 2008 after approval of Zoning Clearance / Plan Check by the Planning Department in the normal course of review of the Building Permit, and Applicant constructed a structure in conformity with the Building Permit; and

WHEREAS, on October 22, 2008, following the issuance of the Building Permit, the City Council adopted Ordinance No. 49-2008 (effective November 21, 2008), which made certain changes to the Zoning Code, including those regulations pertaining to second dwelling units; and

WHEREAS, following court proceedings initiated by a neighboring property owner, and pursuant to a judgment and writ of mandamus issued by the Sacramento Superior Court in April of 2011, on July 7, 2011, the Planning Commission held a public hearing to review the Planning Director's 2008 determination of consistency with the City's Zoning Code; following the public hearing the Planning Commission determined that the structure did not conform to the City's Zoning Code as it existed at the time of the July 7, 2011 hearing; and

WHEREAS, the Applicant filed an application for a Variance from the terms of the existing Zoning Code, and, on November 3, 2011, after a duly noticed public hearing, the Planning Commission heard and denied Applicant's Variance application; and

WHEREAS, on November 10, 2011, the Applicant filed a timely appeal with the City Clerk, appealing the Planning Commission decision denying the Variance to the City Council; and

WHEREAS, on December 14, 2011, the City Council held a duly noticed public hearing to consider the appeal through a de novo hearing as required by Title 23 (Zoning) of the Elk Grove Municipal Code.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Elk Grove finds that the proposed application for a Variance (the "Project") from Joseph & Michelle Henderson ("Applicant") for an accessory structure at 10294 Wrangler Drive is exempt from the California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) based upon the following finding:

Finding: The Project is categorically exempt from the California Environmental Quality Act (CEQA) review pursuant to Section 15301 of Division 6 of Chapter 3 of Title 14 of the California Code of Regulations (State CEQA Guidelines).

Evidence: The Project qualifies for an exemption from CEQA pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines (Division 6 of Chapter 3 of Title 14 of the California Code of Regulations). This exemption applies to projects that consist of the operation, repair, maintenance, permitting, leasing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. No construction activities are anticipated as part of this project and no expansion of the existing use will occur. Therefore, this Project qualifies for the identified exemption and no further environmental review is required.

AND, BE IT FURTHER RESOLVED, that the City Council of the City of Elk Grove approves the Variance based upon the following findings:

Finding 1: That there are special circumstances applicable to the property, including size, shape, topography, location or surroundings, such that the strict application of the Zoning Code deprives such property of privileges enjoyed by other property in the vicinity and under identical land use zoning district classifications.

Evidence: The property owner acted in good faith to construct the structure after issuance of, and consistent with, an approved building permit. Only after the completion of construction activities and the "finaling" of the building permit was the structure found not to comply with the Zoning Code, as amended after the issuance of the building permit. This finding was based upon an appeal of the zoning clearance / plan check and analysis of the characteristics of the structure with portions of the Zoning Code that had been amended since the issuance of the Building Permit. The strict application of the Zoning Code in this instance could require the property owner to either relocate, significantly modify, or demolish the structure, all at significant expense and waste of resources. Additionally, given the other amenities on the property site (including the primary dwelling, pool, pond, softball field, landscaping, and driveway), which types of amenities do not exist on other properties in the vicinity, relocation of the structure would be impractical.

Finding 2: That granting the Variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and land use zoning district in which such property is located.

Evidence: The structure was built as a second dwelling unit in conformity with the Zoning Code as it existed at the time of the issuance of the building permit in 2008. Other property owners in the vicinity could have followed the same procedures and complied with the regulations in effect in 2008 to construct a similar structure on their property.

Finding 3: That granting the Variance will not adversely affect the interests of the public or the interests of residents and property owners in the vicinity of the premises in question.

Evidence: The structure was built as a second dwelling unit in conformity with the

Zoning Code as it existed at the time of the issuance of the building permit. The structure is set back 11 feet, which was more than the 5 feet required under the Zoning Code as it existed at the time of the building permit issuance. While the adjoining neighbor has expressed dissatisfaction with the structure, at least one other set of neighbors supports the applicants and the structure. (See Patty and Ron Suter e-mail of August 25, 2008). The hardship and attendant cost on the applicants should they be forced to remove or move the structure outweighs the harm, if any, caused to neighboring property owners should the structure remain.

Finding 4: That granting the Variance is consistent with the objectives of the General Plan and the Zoning Code.

Evidence: The structure and development of the applicant's property is consistent with the rural character provided for in the General Plan for this area. The structure was built consistent with the Zoning Code as it existed at the time of the issuance of the building permit, and the Zoning Code allows for the issuance of a Variance.

Additional Findings.

As separate, independent, and additional bases to support the Variance, the City Council further find as follows:

Additional Finding 1: A balancing of the relative equities and hardships of the property owners and the neighboring properties supports the issuance of a Variance.

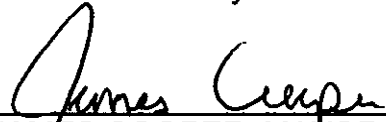
Evidence: The property owners constructed the structure pursuant to, and in reliance on, a building permit issued by the City. The structure was considered a second dwelling unit and was constructed in compliance with the Zoning Code as it existed at the time of issuance of the Building Permit. The hardship and attendant cost on the Applicants should they be forced to remove or move the structure outweighs the harm, if any, caused to neighboring property owners should the structure remain.

Additional Finding 2: The Applicants constructed the structure in good faith reliance on a building permit issued by the City, obtained vested rights to complete the structure as built, and, therefore, the structure is legal.

Evidence: The Applicants were issued a building permit and constructed the structure in conformance to the permit. The structure conformed to the City's Code as it then existed. The circumstance leading to the prior July, 2011 finding of non-conformance with the Code was only due to a change in the Zoning Code (of which applicants had no involvement) after the applicants had received their building permit and commenced substantial construction. Considering these circumstances, the City Council finds that the owners acted in good faith reliance on the building permit issued by the City, and that the owners acquired vested rights to complete the structure as it was ultimately built. On this basis, the City Council finds that the structure was legally constructed and may remain as built.

AND, BE IT FURTHER RESOLVED, that the City Council of the City of Elk Grove finds that the structure is a legal structure conforming to the City's Code; as such the structure may continue to exist as presently constructed and the previously issued building permit for the structure is hereby ratified.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 14th day of December 2011.



JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN HOBBS,
INTERIM CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2011-249**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)


I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 14, 2011 by the following vote:

AYES : **COUNCILMEMBERS:** *Cooper, Hume, Davis, Detrick, Scherman*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California