

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2017-06

A RESOLUTION GRANTING A VARIANCE FOR AN EXPANSION OF AN EXISTING SINGLE-FAMILY RESIDENCE TO ENCROACH 3.5 FEET WITHIN THE FIFTEEN FOOT FRONT YARD SETBACK REQUIREMENT, PROPERTY LOCATED AT 305 FERGUSON AVENUE (OLSEN)

WHEREAS, an application for a variance from the provisions of Title 10, Chapter Four, Table 4.1-1 of the Modesto Municipal Code to permit the expansion of an existing single-family residence within the fifteen-foot front yard setback at 305 Ferguson Avenue was filed by Gary and Paris Olsen on June 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 July 27, 2017 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 15305(a) 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 15303(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, because the house is one of six on this segment of Ferguson Avenue, and is the only home of the six that does not have a covered porch. The variance would permit the construction of a covered porch, which all other homes in the immediate vicinity currently have.
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, because the residence was built in 1947 prior to implementation of the Zoning Code and the front yard setback requirements, and while the placement of the existing home would allow space to expand the two rooms within the current front yard setback requirement, the area is not sufficient to permit the construction of a covered front porch (without encroaching in the front yard setback), an amenity currently enjoyed by other homes in the vicinity. If the applicants were to instead expand from the rear of the home, an existing backyard patio would require demolition.
3. Granting the variance will be consistent with the intent and purpose of this Chapter and will not be detrimental to the neighborhood or public welfare, because the front property line is twelve feet from the gutter of

Ferguson Avenue, and this offset is landscaped. The proposed covered porch would encroach 3.5' or 23% into the 15' front yard setback; however, a distance of 23.5' would remain from the curb to the addition. The encroachment would appear minimal and the proposed covered porch would be similar in design to others in the immediate vicinity to maintain the character of the neighborhood. Therefore the overall appearance of the home with the addition would not be detrimental to the neighborhood or public welfare.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Gary and Paris Olsen a variance from the provisions of Title 10, Chapter 4, Table 4.1-1 of the Modesto Municipal Code to permit a 3.5-foot encroachment into the 15-foot front yard setback requirement of the Low Density Residential (R-1) Zone, subject to the following conditions:

4. Prior to the issuance of a building permit, construction shall conform to the site plan stamped approved by the Board of Zoning Adjustment on July 27, 2017.
5. All landscaping and walls shall be maintained and the premises shall be kept free of weeds, graffiti, trash, and other debris.
6. 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.

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 July 27, 2017, 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 July 27, 2017, by Board Member Moradian, who moved its

adoption, which motion was seconded by Board Member Vohra and carried by the following vote:

Ayes:	Blom, Moradian, Rodriguez, Selover, Vohra
Noes:	None
Absent:	Morris
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