

MODESTO BOARD OF ZONING ADJUSTMENT
NOTICE OF FIELD TRIP
THURSDAY, MARCH 26, 2009 - 9:00 AM
1010 TENTH STREET
LOBBY (MAIN LEVEL/NEAR STAIRS)

I. ROLL CALL

II. FIELD TRIP

There will be a field trip to allow the Board to view property to be discussed at the regular meeting later in the day. Interested parties may join the Board at any of the properties at the approximate times shown below. Statements on the merits of an application are inappropriate on a field trip and should be made at the regular meeting. The regular meeting is on March 26, 2009, 10:00 am in Chambers. The agenda for the regular meeting is attached.

9:00 am	Leave Tenth Street Place to View Property	
9:15 am	Property Located at 605 Sylvan Avenue (SUSD)	Item A
9:35 am	Property Located at 121 N Santa Cruz (Pan de Vida)	Item B

III. ADJOURNMENT

Posted pursuant to Government Code Section 54956 on _____

by _____ on the bulletin board at Tenth Street Place.

MODESTO BOARD OF ZONING ADJUSTMENT AGENDA
REGULAR MEETING
THURSDAY, MARCH 26, 2009 - 10:00 AM
BASEMENT CHAMBERS
1010 TENTH STREET

I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of February 26, 2009.

III. CONFLICT OF INTEREST DECLARATION

Board members and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. CONSENT AND JOINT PUBLIC HEARING ITEMS

None.

V. PUBLIC HEARINGS

Item A CUP-09-002 - Parking lot expansion and future portable building for the Sylvan Union School District Office located at 605 Sylvan Avenue; submitted by Sylvan Union School District Office

Contact Info: Rita Doscher, 577-5267, rdoscher@modestogov.com

Item B CUP-09-001 - Convert an existing commercial building into a church located at 121 N Santa Cruz; submitted by Ministério Jesucristo Pan de Vida

Contact Info: Kristinae Toomians, 577-5267, ktoomians@modestogov.com

VI. OTHER BUSINESS

Item C Feedback – Wireless Communications Ordinance

Contact Info: Paul Liu, 577-5267, pliu@modestogov.com

VII. ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Commissioners (see Notice at end of agenda cover). Under State law, the Board may respond to matters being presented under this item only as follows:

- (a) Briefly respond to statements made or questions raised.
- (b) Ask a question for clarification.
- (c) Provide a reference to staff or other resources for factual information.
- (d) Request staff to report back at a subsequent meeting.
- (e) Finally, a Board member, or the Board itself, may take action to direct staff to place a matter of business on a future agenda.

VIII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Board of Zoning Adjustment and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City's attention after the agenda was posted.

IX. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the Office of the Planning Division, third floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board of Zoning Adjustment Secretary (209) 577-5267. Assistive listening devices are available upon request to the BZA Secretary. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the BZA regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to provide additional information to you. Signing this form is optional to speakers.

Posted pursuant to Government Code Section 54954.2 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

TO: Chairperson Neumann and Members of the Board of Zoning Adjustment

PREPARED BY: Rita Doscher, Associate Planner
Contact Info: 577-5267 rdoscher@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: February 23, 2009

SUBJECT: CUP-09-002 – A conditional use permit for a parking lot expansion and future portable building for the Sylvan Union School District Office located at 605 Sylvan Avenue; submitted by Sylvan Union School District Office

RECOMMENDATION

That the Board of Zoning Adjustment adopt the attached draft resolution granting a conditional use permit to the Sylvan Union School District Office to expand the existing parking lot on the north side of Sylvan Avenue between Northampton Lane and Dragoo Park Drive.

BACKGROUND

The project site is an existing 2.31 acre parcel zoned R-1, with an existing parking lot located on the east side of the property adjacent to the Sylvan Union School District Office. A previous conditional use permit for the Sylvan School District administrative offices was granted by the Board of Zoning Adjustment on June 27, 1974. The surrounding area is fully developed with existing low-density residential homes to the west, north and south, and medium density residential units to the east.

The Municipal Code Section 10-2.504(b), requires that all public buildings or grounds operated by any governmental agency obtain approval of a conditional use permit by the Board of Zoning Adjustment. Therefore, in order to expand the existing parking lot and to add an additional portable building on site, the school was required to request approval of a conditional use permit by the Board.

PROJECT DESCRIPTION

The application is for a Conditional Use Permit to allow for the expansion of an existing parking lot located adjacent to the Sylvan Union School District Office at 605 Sylvan Avenue. The proposed parking lot will have access off of Sylvan Avenue by a new driveway located approximately 120 feet from the existing driveway and will accommodate an additional fifty-six parking stalls, which also includes four handicapped-accessible stalls. Thirty of the future parking stalls will be located to the west of the existing administration building and the remaining eighteen parking stalls will be located just to the north of the existing parking lot. A future 1,920 square-foot portable building addition to be built north of the three existing portable buildings is also included in this conditional use permit application.

ISSUES

Staff sees no unresolved issues pertaining to the proposed development. The proposed conditional use permit was sent to City departments and outside agencies for review. The applicant coordinated with the Traffic Division to develop a design that meets City Standards, which includes a new

driveway off of Sylvan Avenue. The applicant was also required to close off the existing driveway, which was determined to be too close to the intersection and does not meet current City Standards. However, it will continue to be used as an emergency access only. The project is required to provide one shade tree planted every eight parking spaces and to provide fifty-percent parking lot area shade coverage within ten years. This requirement is reflected on the site plan. On-site stormwater requirements is also reflected on the proposed site plan and the developer will be required to submit the appropriate plans and or documents prior to the issuance of a Grading or Building Permit. Prior to the placement or construction of the future portable building, Fire requirements will need to be addressed per City Standards. The conditions of approval, listed in the attached draft Resolution reflect all of the needs expressed by the other City Departments.

GENERAL PLAN CONSISTENCY

The General Plan Land Use Designation for the subject property is R "Residential", which allows for school and school facilities. The proposed conditional use permit to expand the existing school facility parking lot is thus in conformance with the General Plan.

ZONING CONFORMANCE

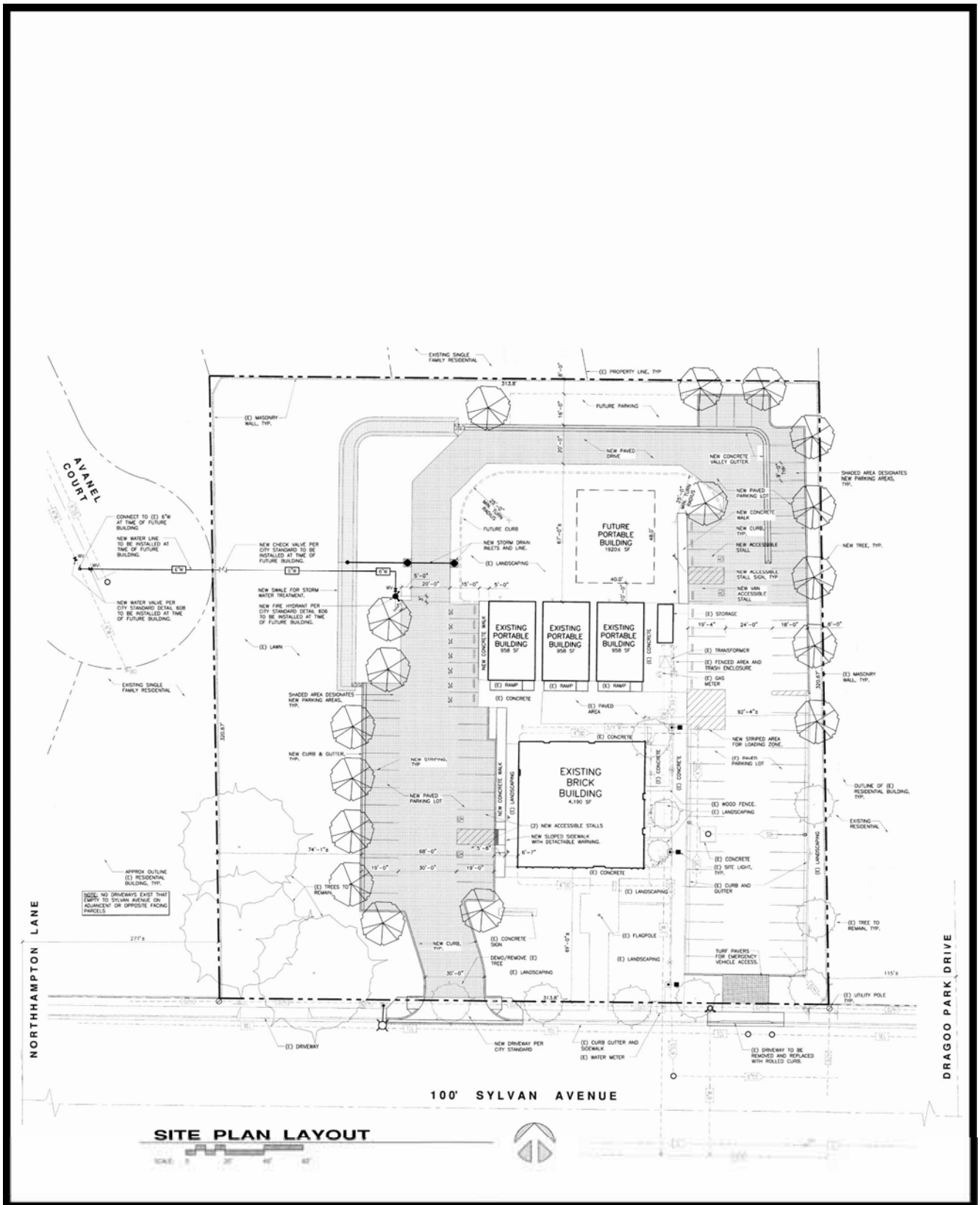
The site is zoned R-1, for Low-Density Residential Zone. Per Section 10-2.504 and 10-2.2503 of the Modesto Municipal Code, the expansion of an existing parking lot for the Sylvan School District Office is permitted upon securing a Conditional Use Permit from the Board of Zoning Adjustment.

ENVIRONMENTAL ASSESSMENT

This CUP involves the addition of an accessory structure to an existing institutional facility and minor parking additions to the project site. The project is exempt under Section 15332 of the CEQA Guidelines under In-Fill Development Projects, and meets all Class 32 qualifications for in-fill development described in the above mentioned section.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Board of Zoning Adjustment Resolution – March 26, 2009
2. Statement of Exemption EA# 2009-07
3. Financial Interest Disclosure Form
4. Large-Format Map



SITE PLAN
CUP-09-002
605 Sylvan Ave.

(Large-format version of plan attached to Board members' agendas)

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2009-XX

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO SYLVAN UNION SCHOOL DISTRICT FOR AN EXPANSION TO THE EXISTING PARKING LOT AND A FUTURE ON-SITE PORTABLE BUILDING LOCATED AT 605 SYLVAN AVENUE (SYLVAN UNION SCHOOL DISTRICT)

WHEREAS, on June 27, 1974 the Board of Zoning Adjustment by Resolution No. 531 approved a conditional use permit for district offices and required on-site parking for the Sylvan Union School District at the above mentioned location, and

WHEREAS, an application for a Conditional Use Permit for an expansion to the existing parking lot and a future on-site portable building located at 605 Sylvan Avenue, was filed by SKW & Associates on behalf of Sylvan Union School District on January 9, 2009; and

WHEREAS, Sections 10-1.202(a) and 10-2.2503 of the Municipal Code authorize the Board of Zoning Adjustment to grant Conditional Use Permits; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on March 26, 2009, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this project is Categorically Exempt under Section 15332 of the CEQA Guidelines which pertains to in-fill Development Projects, which states: Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines as follows:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
2. The proposed project is exempt from CEQA under Section 15332 of the CEQA Guidelines, because the project occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, has no value as habitat for endangered, rare or threatened species, would not result in any significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 605 Sylvan Avenue be granted subject to the following conditions:

1. All development shall conform to the site plan and elevations titled "Sylvan Union School District – District Office Parking Lot Expansion", 605 Sylvan Avenue, Modesto, CA 95350", as amended in red and stamped approved by the Board of Zoning Adjustment on March 26, 2009.

2. Prior to the issuance of a Building Permit, all site improvement plans, including all utility and stormwater management plans, shall be prepared, stamped and signed by a Registered Civil Engineer and submitted for approval by the City Engineer or designee. All improvements shall be constructed in accordance with the approved plans and current City Standards.
3. Prior to the issuance of a Building Permit, all applicable connection, wastewater capacity and plan check fees shall be paid in full to the City of Modesto as acceptable to the City Engineer. Applicable fees will be determined at the time of plan site design and/or plan approval.
4. For all work within the public right-of-way, applicant shall obtain an Encroachment Permit. Prior to the issuance of this permit, all improvement plans shall be designed to current City of Modesto Standard Specifications acceptable to the City Engineer.
5. Prior to the issuance of a Building Permit, applicant shall submit plans to Land Development Engineering for the removal of the existing driveways along Sylvan Avenue fronting the proposed property and re-construct sidewalk per City of Modesto Standard Specifications, acceptable to the City Engineer.
6. Prior to the issuance of a Building Permit, landscape and irrigation plans that meet current City Standards and Municipal Code requirements shall be submitted for approval by the Director of Parks, Recreation and Neighborhoods or designee. All landscape and irrigation plans shall include the following: 1 shade tree planted per 8 parking lot stalls and to be able to provide 50% parking lot area shade coverage within 10 years; plan should indicate and identify all existing and proposed parking lot shade trees.
7. Prior to the removal of any street trees, the developer shall obtain permission from the City of Modesto's Urban Forestry Division.
8. Prior to the placement or construction of future buildings, an on-site fire hydrant will be needed 150 feet north of the western driveway, north of the west right-of-way of stalls of the west parking lot. Hydrant shall be installed according to Modesto City Standards.
9. Emergency vehicle accesses apart from the main parking lot driveway shall be constructed in a manner to allow the safe passage of safety vehicles of 30 tons, with curb cuts to the accesses installed according to City Standards, painted red and labeled "No Parking".
10. Per the City of Modesto Storm Drainage Interim Policy dated September 8th, 2008, No Positive Storm Drainage System – For areas where no positive storm drainage is available, (Rockwell areas) the following design criteria is applicable:
 - a. The volume of the 100-year, 24-hour storm ($R = 2.88''$) must be completely contained on-site and percolate within 48 hours. A

minimum of 50% of the volume shall be stored underground or in a basin in the percolation area. The other 50% of the storm volume may be stored above ground within the on-site top-of-curb provided the 100-year, 24-hour water level is at least 1' below the building(s) finished floor elevation.

- b. Prior to submittal of improvement plans, a geotechnical boring and percolation report are required. Percolation test shall be in the proposed percolation areas and at the correct depth. An absorption rate based on the observed percolation rate (with a minimum safety factor of 2) should be incorporated into the system.
11. Prior to the issuance of a Grading or Building Permit, Developer shall provide an Erosion and Sediment Control Plan for construction project. Erosion and Sediment Control Plan shall be 24" x 36" and included in the project Improvement Plans/Civil drawings.
12. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan for trash enclosure(s):
 - a. To be sufficiently elevated to prevent stormwater run-on from parking lot, and
 - b. To be graded to drain to adjacent landscape area(s), and
 - c. To comply with the provisions of Public Resources Code Section 42911, and be built to City Standards and Guidelines, to include adequate, accessible and convenient areas for the collection and loading of recyclable materials.
13. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan to retain and infiltrate stormwater runoff on site, incorporating pervious landscape features into the project design wherever possible per City Standards.
14. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grass swale, vegetative strip, or other approved proprietary device) to remove pollutants from the first ½" of stormwater run-off from site.
15. Prior to the issuance of a Grading or Building Permit, property owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording.
16. The developer shall implement pre- and post- construction best management practices (BMPs) to minimize pollutants entering the storm system.
17. Existing underground and overhead electric facilities and existing irrigation lines within the project site shall be removed, protected, or relocated as required by the MID and the City Engineer or designee.

Appropriate easements for electric facilities and irrigation lines to remain shall be dedicated as necessary.

18. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
19. The property owner and developer shall, at their sole expense, defend, 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 and shall cooperate fully in the defense.
20. The Capital Facilities Fees payable at the time of the issuance of a building permit for any construction in this development shall be based on the rates in effect at time of issuance of the building permit.
21. All conditions of Board of Zoning Adjustment Resolution No. 531 not in conflict with this action shall remain in full force and effect.

Failure to comply with any of the above conditions is unlawful and will constitute grounds for revocation of the conditional use permit.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on March 26, 2009, by _____, who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF
MODESTO.

Patrick Kelly, Secretary

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

TO: Chairperson Neumann and Members of the Board of Zoning Adjustment

PREPARED BY: Kristinae Toomians, Planning Assistant
Contact Info: 577-5267 ktoomians@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: February 27, 2009

SUBJECT: CUP-09-001 – A conditional use permit application to convert an existing commercial building into a church located at 121 N Santa Cruz; submitted by Ministério Jesucristo Pan de Vida

RECOMMENDATION

That the Board of Zoning Adjustment adopt the attached resolution granting a conditional use permit to Ministério Jesucristo Pan de Vida for a church facility in an existing commercial building located at 121 N Santa Cruz Avenue.

BACKGROUND

The subject property is located on the northwest corner of Santa Cruz Avenue and Shopping Way, north of Yosemite Avenue. According to building permit records, the building was originally constructed in 1950 as a Safeway grocery store. The building continued to be used as grocery store under various names. The applicant is proposing to use the existing 13,000-sqft building as a church and ministry.

PROJECT DESCRIPTION

This is an application to convert an existing 13,000-sqft commercial building into a church and ministry at 121 N Santa Cruz Avenue. The parking lot will also be reconfigured to allow for landscape planters; the removal of parking spaces that would back out onto the public right of way; and the removal of the driveway furthest north of the site. The building will consist of a 280-seat sanctuary, a stage, lobby, library, kitchen, and restroom facilities, in addition to offices on the second floor. The applicant is proposing a total of 85 parking spaces, which exceeds the City's requirements for 1 space per 4 seats for a church. The applicant is not proposing any major changes to the building façade.

ISSUES

Fencing and Parking

The subject property is partially zoned C-1 (Neighborhood Commercial) and C-2 (General Commercial), and is adjacent to property zoned R-3 (High Density Residential), separated by a public alley. According to City Code, an eight-ft high masonry wall must be constructed when commercially zoned property is adjacent to residentially zoned property. In addition, if a public alley separates the commercially zoned property from the residential zones, no parking or driveways shall be permitted off of the alley. Given that the existing parking layout predates this requirement and relies on the alley for adequate onsite circulation, the placement of an eight-ft

wall and removal of driveways off the alley would create an impractical parking design and impede onsite traffic flow. Consequently, staff recommends that the Board not require the eight-ft wall or the elimination of the driveways off the alley. However, the applicant has proposed nine new parking spaces located directly off of the alley, adjacent to the building. Since these spaces constitute an expansion of this nonconforming condition, staff recommends that the approval include a condition requiring the removal of the nine newly-proposed parking spaces on the west side of the building that back into the alley (Condition No. 2). Even with the elimination of the nine parking spaces, the proposed church would still exceed the City's requirements for one space per four seats for a church by six spaces, at 76 parking spaces. The 280-seat sanctuary requires a minimum of 70 spaces.

Development Requirements

Notification of the proposed conditional use permit was sent to City departments and outside agencies for review.

Traffic issues related to this project will need to be addressed at the time of development, which includes a narrowing on the southernmost driveway closest to Shopping Way as per City Standards, and the closure of the existing northernmost driveway (Condition No. 8). On-site stormwater requirements for the parking lots is conditioned in the attached resolution and the applicant will be required to submit the appropriate plans and/or documents prior to the issuance of a Grading or Building Permit (Condition Nos. 6 & 7). Due to the size and occupant load of the building, an automatic sprinkler system is also conditioned in the attached resolution (Condition No. 11).

The conditions of approval, listed in the attached draft Resolution reflect all of the needs expressed by the other City Departments, submitted at the time of drafting this report.

GENERAL PLAN CONSISTENCY

The site is designated Commercial in the Modesto Urban Area General Plan. The Municipal Code allows for churches in this zone through a conditional use permit. Therefore, this project is consistent with the General Plan.

ZONING CONFORMANCE

The subject property is partially zoned C-1 (Neighborhood Commercial) and C-2 (General Commercial). Both the C-1 and C-2 Zones allow churches with a conditional use permit.

ENVIRONMENTAL ASSESSMENT

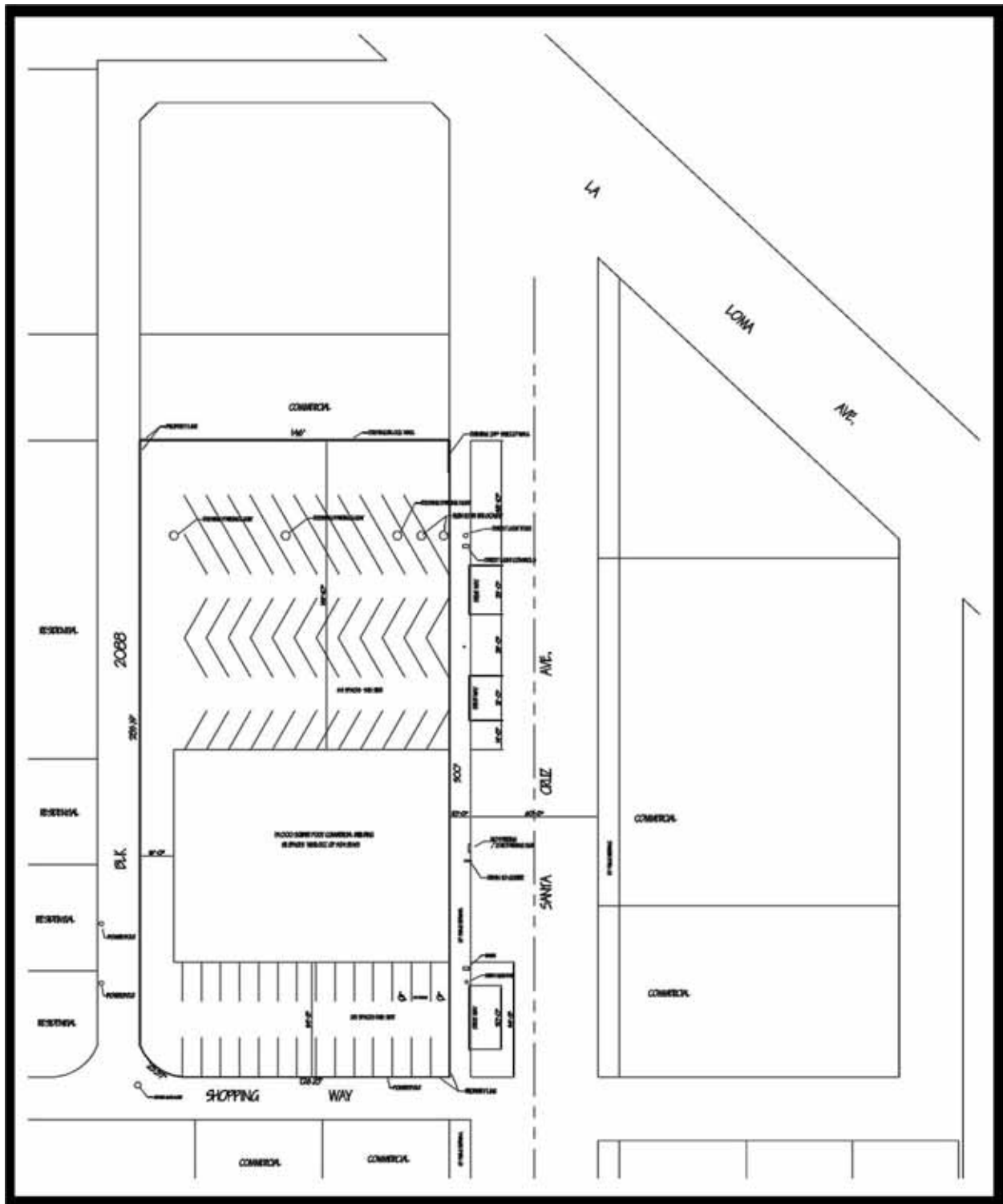
The proposed project is categorically exempt from CEQA, in accordance with Guidelines Section 15332, because it involves infill development within an existing building in an urbanized area. The church building is located within the City of Modesto's Baseline Developed area and surrounded by an existing residential and commercial development. The project does not involve the use of significant amounts of hazardous substances, all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Board of Zoning Adjustment Resolution – March 26, 2009
2. Statement of Exemption No. EA/C&ED 2009-08
3. Financial Interest Disclosure Form
4. Large-Format Map



AREA MAP OF PROPOSED CONDITIONAL USE PERMIT
CUP-09-001
121 N. Santa Cruz Ave.



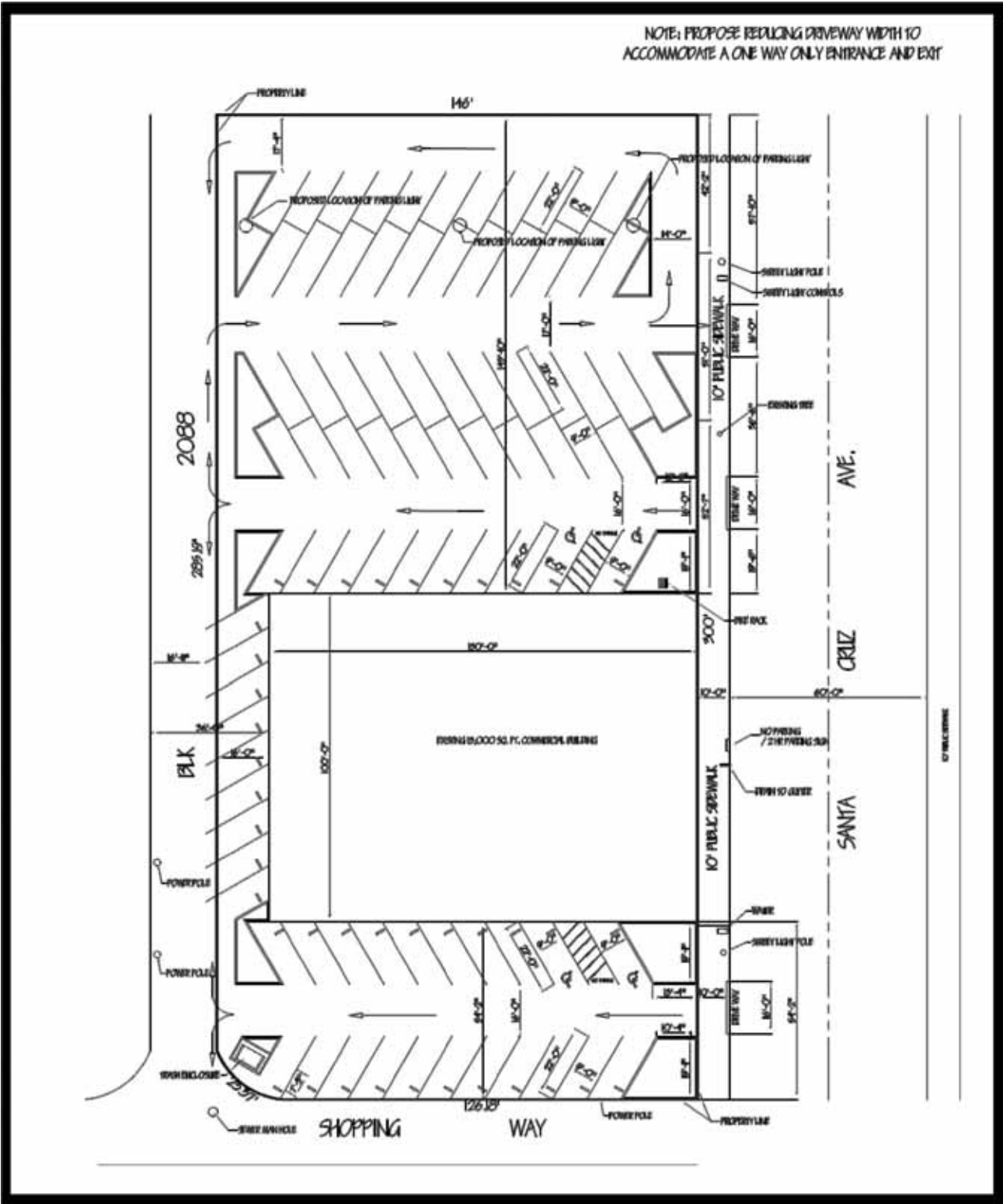
EXISTING SITE CONDITION

CUP-09-001

121 N. Santa Cruz Ave.

(Large -format version of plan attached to Board member's agendas)

NOTE: PROPOSE REDUCING DRIVEWAY WIDTH TO ACCOMMODATE A ONE WAY ONLY ENTRANCE AND EXIT

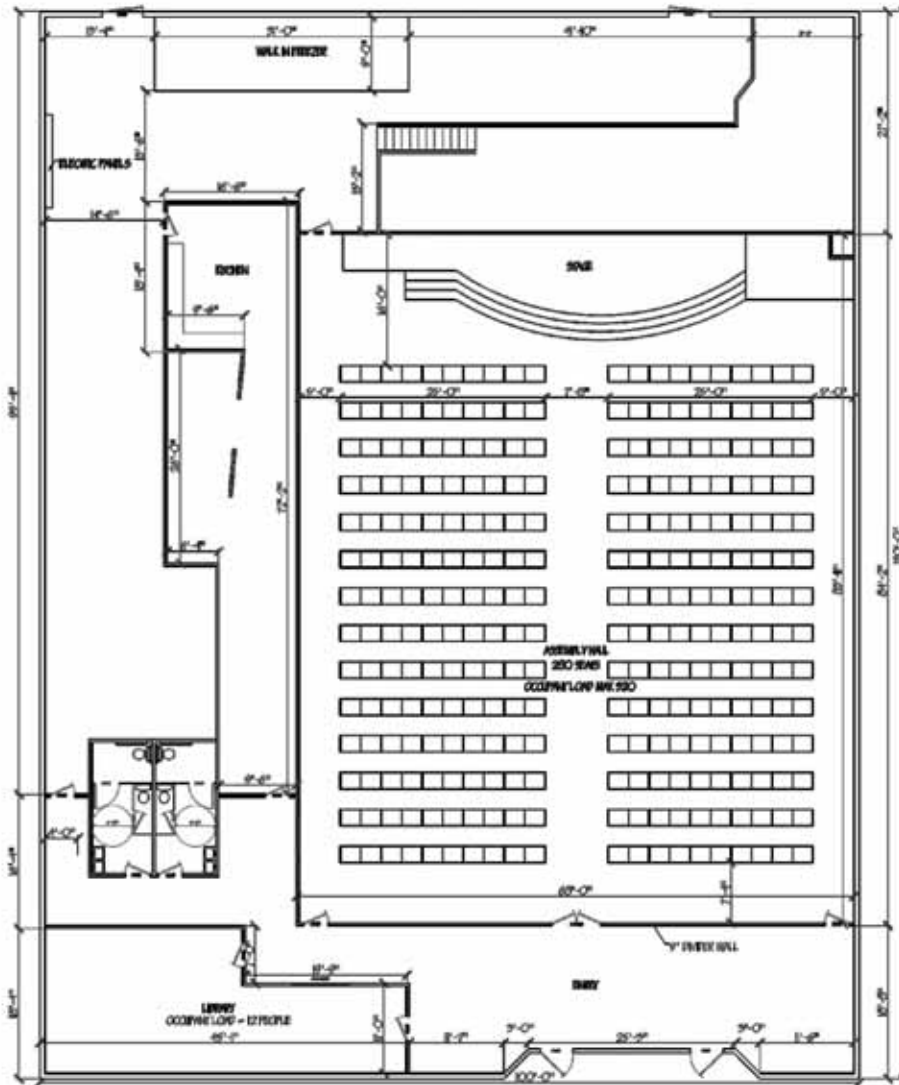
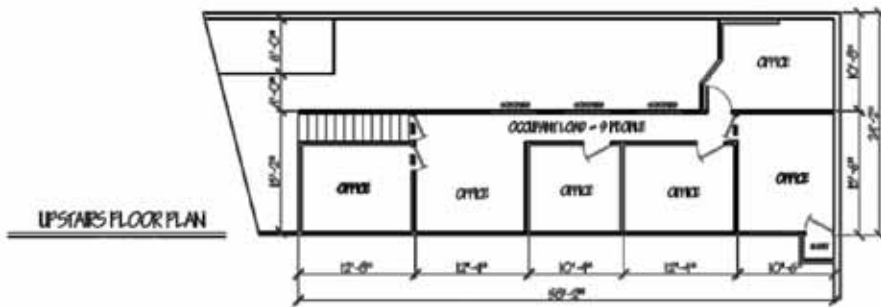


PROPOSED PLOT PLAN

CUP-09-001

121 N. Santa Cruz Ave.

(Large -format version of plan attached to Board member's agendas)



PROPOSED SEATING CAPACITY

CUP-09-001

121 N. Santa Cruz Ave.

(Large -format version of plan attached to Board member's agendas)



BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2009-XX

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO
MINISTÉRIO JESUCRISTO PAN DE VIDA FOR A CHURCH FACILITY IN AN
EXISTING COMMERCIAL BUILDING LOCATED AT 121 N SANTA CRUZ
AVENUE

WHEREAS, an application for a Conditional Use Permit for a church in an existing commercial building located at 121 N Santa Cruz, was filed by Ministério Jesucristo Pan de Vida on January 6, 2009; and

WHEREAS, Sections 10-1.202(a) and 10-2.2503 of the Municipal Code authorize the Board of Zoning Adjustment to grant Conditional Use Permits; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on March 26, 2009, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this project is Categorically Exempt under Section 15332 of the CEQA Guidelines which pertains to In-Fill Development Projects, which states: Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines as follows:

1. The proposed project is consistent with the Modesto Urban Area General because the use is consistent with the C-1 and C-2, Commercial Zone, which provides for uses such as churches.
2. The proposed project is categorically exempt from CEQA, in accordance with Guidelines Section 15332, because it involves the in-fill development project within an urbanized area. The church building is located on a project site of no more than five acres within the City of Modesto's Baseline Developed area and surrounded by existing residential and commercial. The project does not involve the use of significant amounts of hazardous substances, all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 121 N Santa Cruz be granted subject to the following conditions:

1. All development shall conform to the Plot Plan titled "Proposed Parking Layout and Preliminary Landscape Plan" stamped, approved by the Board of Zoning Adjustment on March 26, 2009.
2. Prior to the issuance of a Building Permit, the applicant shall submit plans to the satisfaction of the Community & Economic Development Director, showing the elimination of the parking spaces located adjacent to the west side of the building along the alley, as marked in red on the stamped and approved plans.

3. Prior to the issuance of a Building Permit, all applicable connection, wastewater capacity and plan check fees shall be paid in full to the City of Modesto as acceptable to the City Engineer. Fees will be determined at the time of plan site design and/or plan approval.
4. Prior to the issuance of a Building Permit, the developer shall install a 2-inch Reduced Pressure Backflow Assembly above ground per City of Modesto Standard Specifications.
5. Prior to the issuance of a Building Permit, the developer shall cap any unused sewer laterals on site, as acceptable to the City Engineer.
6. Prior to the issuance of a Grading or Building Permit, developer shall remove all drain-to-gutter connections, rerouting them to pervious landscape features in the project design wherever possible, per City Standards.
7. Prior to the issuance of a Grading or Building Permit, developer shall provide plans for trash enclosure(s):
 - a. To be sufficiently elevated to prevent stormwater run-on from parking lot, and;
 - b. To be graded to drain to adjacent landscape area(s).
8. Prior to the issuance of a Building Permit, applicant shall submit plans to Land Development Engineering for the removal of the existing northernmost driveway along Santa Cruz Avenue and the narrowing on the southernmost driveway, closest to Shopping Way, to 16-ft. The developer shall reconstruct sidewalk as per City of Modesto Standard, and as acceptable to the City Engineer.
9. For all work within the public right-of-way, applicant shall obtain an Encroachment Permit.
10. Prior to the issuance of a Building Permit, the developer shall submit plans to the Land Development Engineering Department for the reconstruction of a City of Modesto tree well along Santa Cruz Avenue, as per City of Modesto Standards, and as acceptable to the City Engineer.
11. Prior to occupancy, an automatic fire sprinkler system shall be provided.
12. Prior to the issuance of a Building Permit, the developer shall submit plans to the City of Modesto Fire Department for conformance with the City of Modesto Fire Code and the 2007 California Fire Code. If at that time it is determined that a fire hydrant is needed, the developer shall install a single fire hydrant along Santa Cruz Avenue at a location to be determined by the Fire Chief.
13. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
14. The property owner and developer shall, at their sole expense, defend, 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 and shall cooperate fully in the defense.

Failure to comply with any of the above conditions is unlawful and will constitute grounds for revocation of the conditional use permit.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the Secretary of the Board is directed to file with the Stanislaus County Clerk a Notice of Determination in regard to the environmental impact of the proposed conditional use permit.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on March 26, 2009, by _____, who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

TO: Chairperson Neumann and Members of the Board of Zoning Adjustment

PREPARED BY: Paul Liu, Senior Planner
Contact Info: 577-5267 pliu@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: March 10, 2009

SUBJECT: CODE-2009-01 – Draft Wireless Telecommunication Facilities Ordinance;
initiated by City of Modesto

RECOMMENDATION

This is an informational item introducing the Draft Wireless Telecommunication Facilities Ordinance and no action is needed at this meeting.

BACKGROUND

Over the past few years, the City of Modesto has reviewed multiple proposals for wireless telecommunication facilities, mostly proposed on poles and commonly referred to as cell towers. The City of Modesto does not have specific standards addressing wireless telecommunication facilities and the City review has been based on height requirements in the Zoning Ordinance. The Board of Zoning Adjustment, Planning Commission, and City Council have expressed concerns about the lack of specific standards. Over the past several months, City staff has worked on the attached Draft Wireless Telecommunication Facilities Ordinance.

PROJECT DESCRIPTION

A presentation will be provided on the Draft Wireless Telecommunication Facilities Ordinance.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Wireless Telecommunication Facilities Ordinance

Article 31 WIRELESS TELECOMMUNICATION FACILITIES

10-2.3101 Purpose and intent.

10-2.3102 Definitions.

10-2.3103 Applicability.

10-2.3104 Location and Facility Type hierarchy.

10-2.3105 Review Process.

10-2.3106 Development Standards.

10-2.3107 Findings.

10-2.3108 Application submittal requirements and initial review.

10-2.3109 Removal of telecom facilities.

10-2.3101 Purpose and intent.

(a) The purpose of this chapter is to provide for wireless telecommunication (“telecom”) facilities on public and private property consistent with federal and state law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes and neighborhoods, protecting scenic views, and otherwise mitigating the impacts of such facilities while insuring adequate service to the community.

(b) It is the objective of the City that all telecom facilities be as unobtrusive as possible and that the number of freestanding telecom facilities be minimized. The standards and policies established by this Article are intended to ensure that telecom facilities within the City are developed in harmony with the surrounding environment through regulation of location and design.

(c) The provisions of this chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

10-2.3102 Definitions.

For the purposes of this Article, certain terms shall have meanings as follows:

(a) **“Antenna”** means a device used to transmit and/or receive radio or electromagnetic waves between Earth and/or satellite-based systems, including without limitation reflecting discs, panels, microwave dishes, whip antennas, direction and non-direction antennas consisting of one or more wires or elements, multiple antenna configurations, or other similar electromagnetic wave transmission and/or reception devices.

(b) **“Antenna array”** shall mean two (2) or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

(c) **“Camouflage”** or **“camouflaged facility”** means a telecom facility in which the antenna, monopole, uni-pole, and/or tower, and sometimes the support equipment, are hidden from view, or effectively disguised as may reasonably be determined by the Director or Board of Zoning Adjustment as applicable, in a false tree, monument, cupola, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing telecom facilities which do not mimic

or appear as a natural or architectural feature to the average observer are not within the meaning of this definition.

(d) “Co-location” means an arrangement whereby multiple telecom facilities owned or operated by different telecom operators share the same structure or site.

(e) “FCC” means the Federal Communications Commission.

(f) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal, costs and technological factors.

(g) “Lattice tower” or “tower” means an open framework freestanding structure used to support one or more antennas, typically with three (3) or four (4) support legs or main vertical load-bearing members.

(h) “Monopole” means a single freestanding pole used to act as or support an exposed antenna or antenna arrays.

(i) “Non-Residential Use” includes uses such as churches, schools, residential care facilities that are not a residential use but may be allowed in a residential zone typically with a Conditional Use Permit.

(j) “Operator” or “telecom operator” means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.

(k) “Radio Frequency” means electromagnetic waves in the frequency range of 300 kHz (300,000 cycles per second) to 300 GHz (300 billion cycles per second).

(l) “Radome” means a visually opaque, radio frequency transparent material which may be flat or cylindrical in design, and is used to visually hide antennas.

(m) “Support equipment” means the physical, electrical and/or electronic equipment included within a telecom facility used to house, power, and/or process signals from or to the facility’s antenna or antennas.

(n) “Structure” means any structure consistent with the definition provided in Section 10-2.248 but focusing on a structure that can be used for a telecom facility such as a monopole, uni-pole, or tower, buildings, steeples, clock towers, park playfield lighting standards, water tanks, and signs.

(o) “Telecommunication(s) facility, telecom facility, wireless telecommunications facility,” or simply **“facility”** means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

(p) “Uni-pole” is a monopole that does not have antenna elements other than the pole itself or the antenna elements are concealed inside a radome of the same diameter as the pole, or exceeding the pole diameter by no greater than six inches.

(q) “Utility tower” shall mean an open framework structure or steel pole used to support electric transmission facilities (see Lattice Tower).

10-2.3103 Applicability.

These regulations are applicable to telecom facilities providing voice and/or data transmission such as, but not limited to, mobile telephone services, fixed microwave services, and mobile data services.

(a) Exempt facilities. Amateur radio antennas, antennas used solely for the purpose of receiving local broadcast stations, and satellite dish antennas of one (1) meter in diameter or smaller and City owned/operated communication facilities are exempt from the provisions of this chapter.

10-2.3104. Location and facility type hierarchy

- (a) **Location and Facility Type priorities.** When reviewing proposed locations and facility types for telecom facilities the Community and Economic Development Director (Director) or Board of Zoning Adjustment (BZA), as applicable, shall utilize the following priority order provided in Table 31.1:

Priority Table 31.1 – Location and Facility Type Priorities	
Location Priority	
1. Industrial zone	
2. Public buildings and public property such as parks, golf courses, or water tank sites	
3. Commercial zone	
4. Professional office zone	
5. Residential zone other than per 2 above	
Facility Type Priority	
1. New telecom facility fully camouflaged on existing or new building or structure	
2. New telecom facility co-located on existing monopole, uni-pole, or tower	
3. New camouflaged monopole, uni-pole, or tower	
4. New non-camouflaged uni-pole without attached antenna elements	
5. New non-camouflaged monopole with attached antenna elements	
6. New non-camouflaged lattice tower	

10-2.3105 Review Process.

- (a) **By Zoning Districts.** Telecom facilities shall be allowed in the residential, office, commercial, and industrial zoning districts subject to the review process as provided in Table 31.2. Telecom facilities on public buildings and public property are provided for in subsection (b) below:

Table 31.2 – Telecom Facility Requirement						
Telecom Facility	R-1, R-2, R-3		P-O, C-1	C-2, C-3, C-M	M-1, M-2, B-P	
	Residential Use	Non-Residential Use				
On Building or other Structure						
Camouflaged	N	P	P	P	P	
Non-Camouflaged	N	C	D	D	D	
Monopole, Uni-pole, or Tower						
Camouflaged	Uni-pole	N	D	P	P	P
	Monopole	N	D	P	P	P
Non-Camouflaged	Uni-pole	N	C	C	C	D
	Monopole	N	C	C	C	D
	Lattice Tower	N	N	N	N	C
Co-location with existing facility						
Camouflaged	N	P	P	P	P	
Non-Camouflaged	N	D	D	D	D	
P=Permitted, Building Permit D=Development Plan Review by Director pursuant to Chapter 2, Article 30. Development Plan Review C=Conditional Use Permit by Board of Zoning Adjustment pursuant to Chapter 2, Article 25. Variance and Conditional Use Permits N=Not permitted						

- (b) **On Public Buildings and Public Property.** All telecom facilities that are camouflaged are permitted on public buildings and public property. Non-camouflaged telecom facilities that are co-located on an existing structure may be approved by the Director pursuant to Development Plan Review.

Telecom Ordinance

S:\Projects\CODE - Code Amendments\CODE-09-001 (Telecom)\CODE-09-001 EXH Draft Ordinance 3-16-09.doc
3/19/2009

A Conditional Use Permit as approved by the Board of Zoning Adjustment is required for a new non-camouflaged uni-pole or monopole.

10-2.3106 Development Standards.

(a) Fall Zone Setbacks. All new monopole, uni-pole, lattice tower, or any other freestanding or guyed tower telecom facilities shall maintain a setback from any residential use that is at least 110 percent of the maximum height of the facility, including any Antenna or Antenna Array attached thereto. All new telecom facilities shall also meet the minimum setback requirements of the underlying zone. In approving such telecom facilities, the Director or BZA, as applicable, shall consider maximizing adjacent setbacks from streets and residential properties to minimize the visual obtrusiveness of telecom facilities.

(b) Separation Requirement. Except on public buildings and public property, all non-camouflaged monopole, uni-pole, or tower telecom facilities shall maintain a minimum 1,000 feet separation from all other non-camouflaged monopole, uni-pole, or tower telecom facilities. Consideration for a separation of less than 1,000 feet for non-camouflaged monopole, uni-pole, or tower would be pursuant to section 10-2.3106 (d).

(c) Height. In general, for a given location, the facility shall be at the lowest possible height consistent with the radio frequency coverage requirements of the applicant, which shall be disclosed to the City as prescribed by the Director.

(1) Maximum Height. The maximum height limits are as set forth in Tables 31.3.

Requests for Facilities exceeding the height limits set forth in Tables 31.3 shall be made as a Variance, and subject to the findings for a Variance for Telecom Facilities provided in City Municipal Code Section 10-2.2503.

(2) Roof Mounted Facilities. For roof mounted facilities, antennas and support structures shall not exceed the allowable height limit for the zoning district in which it is located by more than ten (10) feet or exceed the primary roof parapet height by more than six feet, whichever is less, unless it can be demonstrated that such facilities cannot be seen from any other parcel at ground level.

Table 31.3 – Telecom Facility Maximum Allowed Height (measured in feet)					
Telecom Facility	R-1, R-2, R-3	R-1, R-2, R-3	P-O, C-1	C-2, C-3, C-M	M-1, M-2, B-P
	Residential Use	Non-Residential Use ²			
On Building or other Structure ¹	N	10	10	10	10
Monopole, Uni-pole, or Tower ³	N	50	50	55	55

¹ Additional feet above permitted or actual building or structure height
² See definition
³ The height of a monopole, uni-pole, or tower that existed prior to the adoption of this ordinance may be increased by 10 feet if shown necessary for collocation purposes for uni-pole design subject to Development Plan Approval by the Director.
N=Not permitted

(d) Projection.

(1) Building Mounted Antennas. The antenna and mountings shall not project more than 18 inches from the building surface to which it is mounted to the farthest point on the antenna or antenna mounting, whichever is farther, measured horizontally from the building surface.

(e) Co-location requirements.

(1) Co-location potential required. To limit the adverse visual effects of a proliferation of telecom sites in the City, the proposed construction of new telecom facilities shall be designed to

accommodate co-location of two or more service providers. Any new telecom facility may be required to co-locate with another existing or new facility, unless it can be demonstrated to be technically or economically infeasible.

(2) Co-location limitations. Except on public buildings and public property, no more than three non-camouflaged telecom facilities on buildings or structures, or the number of antennas on a non-camouflaged monopole, uni-pole, or tower may co-locate at a single site unless findings can be made pursuant to section 10-2.3107 (e) can be made. More than three non-camouflaged telecom facilities on public buildings and public property require approval by the Director.

(3) Co-location on existing large towers. Co-location on existing large towers (100 feet or higher) may be approved by the Director if the new telecom facility is determined to result in minimal increase on the visual intrusiveness to the surrounding area.

(f) Screening criteria. Telecom facilities must be visually compatible with surrounding buildings and vegetation through the use of techniques such as color and materials. In addition to the other design standards of this section, the following criteria shall be applied by the Director or BZA, as applicable, in connection with the processing of any permit.

(1) On a Roof. Roof-mounted antennas shall be screened from view from adjacent properties and the public right-of-way. The screening may include parapets, walls, or similar architectural elements provided that they are designed, colored and textured to integrate with the existing architecture of the building.

(2) On a Building Façade. Building-mounted antennas shall be recessed and covered with an RF-transparent and visually opaque material of a color and texture to match the existing building, or be effectively disguised or screened as may be reasonably determined by the Director or BZA as applicable.

(3) On Other Structures. Antennas mounted on or within structures such as a clock tower, steeple, park playfield light or water tank shall be integrated with the structure or effectively screened from public view.

(4) Monopole, Uni-pole, or Tower. A monopole or tower facility shall be concealed, screened, or camouflaged by existing or proposed new vegetation, buildings, or other structures and blend into the surrounding environment to the greatest extent possible as may be reasonably determined by the Director or BZA as applicable.

(5) Support Equipment. Support equipment shall be screened from public view by decorative fence, wall, parapet, landscaping, berming or any combination thereof as approved by the Director or BZA, or shall be located within a building, enclosure, or underground vault, which is designed, colored, textured, and landscaped to match the adjacent architecture or blend in with the surrounding environment. For ground-mounted installations, support equipment may be required to be screened in a security enclosure consistent with the design provisions. Chain link fencing including barbed wire and razor wire may be allowed if it is not visible from the public.

(g) Within the Public Right-of-Way. Telecom facilities and or support equipment proposed to be located in the public right-of-way shall comply with the provisions of the Modesto Municipal Code. Telecommunications support equipment located in the public right-of-way shall be placed within flush-to-grade enclosures utilizing flush-to-grade venting systems except in those cases where the Director or BZA, as applicable determines that it is not technically feasible to do so, in which case proper screening, as approved by the Director or BZA as applicable, shall be required. In addition, ground-mounted equipment in the public right-of-way shall comply with all requirements of the Americans with Disabilities Act (ADA), and shall not interfere with drivers' sight lines for roadways, sidewalks, and driveways.

(h) Building Code. Wireless telecommunications facilities, including, but not limited to, antennas, support structures, equipment structures, and related structures and equipment shall be designed,

constructed, and maintained in accordance with the most current California Building Code and other applicable codes, laws, and regulations, as enforced by the Division of Building Safety, to assure that all such facilities will maintain their structural integrity despite the effects of the elements.

(i) Night lighting. Telecom facilities shall not be lighted except:

- (1) For City-approved security lighting at the lowest intensity necessary for that purpose; and
- (2) As necessary for the illumination of the flag of the United States or the flag of the State of California, when such flag(s) are attached to or associated with the telecom facility.

Such lighting shall be shielded so that direct illumination does not shine on nearby properties.

- (3) Any lighting which may be required by State or Federal law.

(j) Signs and advertising. No advertising signage or identifying logos shall be displayed on any telecom facility except for small identification, address, warning, and similar information plates not exceeding one (1) square foot or the minimum requirement by State or Federal law.

(k) Available technology. All telecom facilities approved under this Chapter shall utilize the most efficient and available state-of-the-art technology in order to minimize the number of facilities and also to minimize their visual impact.

10-2.3107 Findings.

(a) Development Plan Review. Telecom facilities may be approved by the Director pursuant to Development Plan Review subject to all of the following findings:

- (1) The proposed telecom facility will not adversely impact the use of the property, other buildings and structures on the property, or the surrounding area or neighborhood.
- (2) The proposed new telecom facility results in the least intrusive visual impact to the area.
- (3) The proposed site can close a significant gap in coverage.
- (4) The proposed telecom facility conforms with the provisions of this Article.

(b) Conditional Use Permit. In considering any Conditional Use Permit pursuant to Table 31.1 above, the Board of Zoning Adjustment shall determine that the applicant has demonstrated all of the following:

- (1) Other locations or type of telecom facilities not requiring such approval are either not available or not feasible.
- (2) The proposed telecom facility will not adversely impact the use of the property, other buildings and structures on the property, or the surrounding area or neighborhood.
- (3) The proposed new telecom facility results in the least intrusive visual impact to the area.
- (4) The proposed site can close a significant gap in coverage.
- (5) The proposed telecom facility conforms with the provisions of this Article.

(c) Maximum Height. Consideration to exceed the maximum height pursuant to Table 31.3 located in Section 10-2.3106 may occur upon approval of a Variance application based on making all of the following findings of City Municipal Code Section 10-2.2503.

(d) Separation Requirement. Consideration to reduce the 1,000 feet separation requirement located in Section 10-2.3106 for non-camouflaged monopole, uni-pole, or tower telecom facilities from another non-camouflaged monopole, uni-pole, or tower telecom facilities may occur upon approval of a Conditional Use Permit based on making all of the following findings:

- (1) The visual impacts of the less than 1,000 feet separation are not significant.
- (2) Requiring the 1,000 feet separation would result in a significant gap in coverage.
- (3) There is no available feasible alternate location for a proposed new facility.

(e) Co-location. Consideration for more than three non-camouflaged telecom facilities on buildings or structures, or the number of antennas on a non-camouflaged monopole, uni-pole, or tower may co-locate at a single site based on making the following findings.

- (1) The net visual effect of locating an additional facility at a co-location site will be less than establishing a new location.
- (2) There is no available feasible alternate location for a proposed new facility.

10-2.3108 Application submittal requirements and initial review.

(a) Submission requirements. Applications for telecom facilities shall be accompanied by the following minimum documentation, in such form and on such form as required by the Director of Community and Economic Development. These are in addition to the usual zoning application submittal requirements for site plan review. The Director of Community and Economic Development shall make changes to the form as necessary. The form shall be used to obtain required information to include in the City's administrative file for each project as required by federal law to base decisions on these projects on substantial evidenced contained in the administrative file.

(1) Justification. A brief narrative, accompanied by written documentation where appropriate, that explains the purpose of the facility and validates the applicant's efforts to comply with the design, location, and co-location standards of this chapter.

(2) Coverage and Location Maps of Current and Future Facilities. As required by the Director, a map or maps showing the geographic areas to be served by the facility by area and radio frequency information. Maps and other supporting documentation demonstrating the need for the facility to close a significant gap in coverage, if such a gap is claimed by the applicant. In order to facilitate planning and reduce the need for future stand-alone telecom facilities, the Director may also require the applicant to submit a comprehensive plan of the operator's existing and future facilities that are or may be placed within the City limits of Modesto.

(3) Visual simulations. Visual simulations showing "before" and "after" views of the proposed facility, unless the Director determines that such simulations are not necessary for the application in question. Consideration shall be given to views from both public areas and private residences. Such photos, simulations or other accurately scaled representations shall include all proposed antenna structures, antennas, and related accessory equipment including, without limitation, all related physical structures to be placed on any new or existing equipment or support device.

(4) Emission Standards. Documentation showing the specific frequency range that the facility will use upon and throughout activation, certification that the facility will continuously comply with FCC radio frequency emissions safety standards.

(5) Radio frequency compliance and RF emissions safety report and Project Design Review. At its discretion, the City may engage an outside technical consultant to evaluate and/or verify compliance with FCC radio frequency (RF) emissions safety requirements in FCC Office of Engineering and Technology Bulletin 65 (or revisions or replacements thereto), as well as to conduct a project design review. Fees for the outside consultant shall be deposited with the City in advance.

(7) Supporting materials. Additional supporting materials deemed necessary by the reviewing Department Director in order to complete review of the proposal. Supporting materials may include, but are not limited to, color and material sample boards, proposed informational signage, landscaping plans, and other radio frequency related information.

(8) Supplemental telecom site application form. The City may require the use of a City-developed supplemental antenna site application form to solicit information in support of the development of a comprehensive administrative record.

(9) Fee. Applications shall be accompanied by a fee to defray all estimated reasonable costs and expenses incidental to review and processing of the application. The Director may determine an additional deposit shall be provided to cover any expense incurred by

any City Department or for any outside technical or legal services that is necessary to review the application. [? See 5.](#)

10-2.3109 Removal of telecom facilities.

(a) Discontinued use. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Community and Economic Development Director by certified mail no less than thirty (30) days prior to such action. The operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable time as may be approved by the Community and Economic Development Director, within which to complete one of the following actions:

- (1) Reactivate use of the telecom facility;
- (2) Transfer the rights to use the telecom facility to another entity and the entity immediately commences use;
- (3) Remove the telecom facility and restore the site at the permittee's sole expense.

(b) Abandonment. Any telecom facility that is not operated for a continuous period of 180 days or whose operator did not remove the telecom facility in accordance with subsection (a) shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the telecom carrier last known to use such facility and, if applicable, the owner of the affected real property, providing thirty (30) days from the date of the notice within which to complete one of the following actions:

- (1) Reactivate use of the telecom facility;
- (2) Transfer the rights to use the telecom facility to another owner;
- (3) Remove the telecom facility and restore the site at the permittee's sole expense.

(c) Removal. The City may remove any telecom facility on city owned property where ~~the owner and/or~~ service provider has not responded to the 30-day notice as provided in (a) and (b) above. The cost of the removal shall be paid by the ~~owner~~[service provider](#).

Article 25 VARIANCES AND CONDITIONAL USE PERMITS

The addition of new Section 10-2.2503 - Variance application for telecom facilities is provided as follows:

10-2.2503 Required Findings for Variance - Wireless Telecommunications Facilities

The applicant for a variance for shall have the burden of proof of showing that:

- (a) There are special radio frequency technology circumstances or conditions applicable to the property or building in question which do not exist for other properties or buildings within a radius of 2,000 feet from the proposed facilities site;
- (b) The special radio frequency technology circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of its ability to close a demonstrated significant gap in its own network coverage using the least intrusive means to close that gap;
- (c) Granting the variance will be consistent with the intent and purpose of this chapter and the federal Telecommunications Act of 1996 (Public Law 104-104).

ARTICLE 23 GENERAL PROVISIONS

The amendment of Section 10-2.2304 – Utilities and Railroads is provided as follows:

10-2.2304 Utilities and Railroads.

- (a) The provisions of this chapter shall not apply to the poles, lines or ~~other~~ similar ~~transmission~~ facilities, whether above ground or underground, ~~solely for the~~ whose sole purpose is non-wireless transmission of ~~transmitting~~ electricity or communications. This exclusion does not apply to the antennas, monopoles, towers, or any similar or related facilities of wireless communication services.
- (b) Railroad rights-of-way may be used solely for the purpose of accommodating the tracks, signals and other operating devices for controlling the movement of rolling stock, and the poles, wires, pipelines, communication circuits and ~~other~~ similar facilities of other utilities, including only those wireless communication facilities associated with and required for the operation of the railroad.