

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2009-05

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO R AND R DEVELOPMENT COMPANY, LLC FOR THE RENOVATION OF THE YMCA BUILDING, INCLUDING THE ADDITION OF A 43-FOOT-TALL TOWER ELEMENT, BUILDING LOCATED AT 2700 MCHENRY AVENUE (R AND R DEVELOPMENT COMPANY, LLC)

WHEREAS, on August 25, 1977 the Board of Zoning Adjustment by Resolution No. 745 approved a conditional use permit for the YMCA Building at the above mentioned location, and

WHEREAS, an application for a Conditional Use Permit for the renovation of the former YMCA building, including the addition of a 43-foot-tall tower element, building located at 2700 McHenry Avenue, was filed by R and R Development Company, LLC August 10, 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 September 24, 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 2700 McHenry Avenue be granted subject to the following conditions:

Planning

1. Prior to the issuance of a building permit, all development shall conform to the plot plan and building elevations titled "Health Club", stamped approved by the Community and Economic Development Director, on September 24, 2009.
2. All conditions of Board of Zoning Adjustment Resolution No. 745 not in conflict with this action shall remain in full force and effect.
3. Prior to issuance of a building permit, the applicant shall submit a cross-section drawing for approval, showing how all rooftop equipment is to be screened from view (including dimensions, materials, colors, etc.) to the satisfaction of the Director of Community and Economic Development or designee. Roof-mounted equipment, including but not limited to air conditioners, fans, vents, antennas, and dishes should be set back from the roof edge and placed behind a parapet wall or in an enclosure, so they are not visible to motorists or pedestrians. Screening for equipment should be integrated into the building and roof design by the use of compatible materials, colors and forms. Wood lattice and fence-like coverings are not allowed for screening.

Land Development Engineering

4. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a Registered Civil Engineer and approved by the City Engineer or designee. Improvements shall be constructed in accordance with the approved plans
5. Electric facilities and overhead lines shall be removed, relocated, or protected as required by the Modesto Irrigation District and the City Engineer or designee. Appropriate easements for electrical facilities shall be granted as required. Relocation or installation of electric facilities shall conform to the District's Electric Service Rules. Costs for relocation and/or undergrounding the District's facilities at the request of others will be borne by the requesting party.

Landscaping

6. Prior to the issuance of a building permit, the applicant shall submit a landscaping and irrigation plan conforming to current City of Modesto specifications and standards for review and approval by the Parks, Recreation and Neighborhoods Director or designee. Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.
7. The applicant shall install landscaping in the existing planter along the eastern property line to provide a buffer to the residences to the east, to the satisfaction of Parks, Recreation and Neighborhoods Director or designee (in consultation with the Modesto Irrigation District).

Storm Water Quality

8. Prior to the issuance of a Grading or Building Permit, Developer shall obtain coverage for the construction project under the General Construction Activity Permit (General Permit) issued by the State Water Resources Control Board (SWRCB). To obtain coverage under the General Permit, a Notice of Intent (NOI) must be filed with the SWRCB. Submit one copy of NOI to Land Development Engineering, Stormwater.

Upon receipt of NOI, the SWRCB will issue a Waste Discharge Identification Number (WDID Number) to the construction project. Submit one copy of the WDID Number to Land Development Engineering, Stormwater.

The General Construction Permit requires the Developer to prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) for the construction project. Submit one copy of the SWPPP to Land Development Engineering, Stormwater for review.

9. 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).
10. 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.
11. 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, unless the Developer can demonstrate to the satisfaction of the City Engineer or designee, that the plan currently in place and memorialized in the Stormwater Treatment Device Access and Maintenance Agreement dated July 15, 2004 recorded as document no 204-0124204-00 ("Stormwater Agreement") is sufficient to serve the property.
12. 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.

Capital Facilities Planning

13. Utilize any existing water and sewer services as needed for the proposed building, any services that are not needed for connection, have to be

caped and abandoned properly. For any new water and sewer connections, an encroachment permit has to be obtained and connection fees paid to the City prior to construction.

14. Prior to issuance of a building permit, the application shall submit storm drainage calculations for review and approval by the City Engineer or designee.

Fire Prevention

15. Fire Hydrant distribution and spacing requirement for this project is 300' O.C. with a hydrant located within 90' of automatic fire sprinkler system fire department connection (FDC). Please show on plans onsite and offsite existing and proposed fire hydrants.

General

16. 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. 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. (Condition)
17. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
18. Applicants proposing to construct a public swimming pool shall submit legible plans and specifications to DER for review and written approval prior to commencing the work and in advance of any building, plumbing, or electrical permit (Title 22 CHSC). A Risk Management Prevention Program must be implemented prior to operation of the pool if chlorine gas is used in excess of 100 pounds.

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 September 24, 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.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the conditional use permit granted on September 24, 2009 becomes null and void if not exercised on or before September 24, 2011.

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 September 24, 2009, by Ryan Swehla, who moved its adoption, which motion was seconded by Amy Neumann and carried by the following vote:

Ayes: Bergman, Neumann, Pollard, Saxton and Swehla
Noes: None
Absent: Brandvold and Grover

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

Original, signed copy on file in CEDD
Patrick Kelly, Secretary