

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2009-08

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO MOHAMED RAHIMI FOR A LARGE RECYCLING COLLECTION FACILITY, BUILDING LOCATED AT THE NORTHEAST CORNER OF YOSEMITE BOULEVARD AND TRASK LANE, 2413 YOSEMITE BOULEVARD, SUBJECT TO THE FOLLOWING ADDITIONAL CONDITIONS: THAT THE COLLECTION OF NON-CALIFORNIA REDEMPTION VALUE (CRV) MATERIALS SHALL BE PROHIBITED, AND THAT THE FACILITY SHALL MAINTAIN ADEQUATE PEST CONTROL SERVICES.

WHEREAS, an application for a Conditional Use Permit for a large recycling collection facility, building located at 2413 Yosemite Boulevard, was filed by Mohamed Rahimi on November 24, 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 December 17, 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 15301 of the CEQA Guidelines which pertains to existing buildings that involves negligible or no expansion of an existing use.

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 15301 of the CEQA Guidelines, because the project involves the leasing of an existing private structure with negligible or no expansion of a commercial use.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 2413 Yosemite Boulevard be granted subject to the following conditions:

1. The outdoor storage of recyclables shall be prohibited.
2. The use of power driven processing equipment onsite shall be prohibited.
3. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
4. The Collection of Non-California Redemption Value (CRV) materials shall be prohibited.
5. The facility shall maintain adequate pest control services.

6. 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.

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 December 17, 2009 becomes null and void if not exercised on or before December 17, 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 December 17, 2009, by Ryan Swehla, who moved its adoption, which motion was seconded by Hank Pollard, and carried by the following vote:

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

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

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