

PLANNING COMMISSION  
RESOLUTION NO. 2009-13

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDMENT TO P-D(53), PROPERTY LOCATED ON THE NORTHEAST CORNER OF COFFEE ROAD AND SYLVAN AVENUE (M & M STONE)

WHEREAS, Planned Development Zone, P-D(53), was approved by the City Council by Ordinance No. 942-C.S., which became effective on February 5, 1969, to allow a 10-acre neighborhood shopping center at the northeast corner of Coffee Road and Sylvan Avenue on property located 3500 Coffee Road; and

WHEREAS, City Council Resolution No. 68-1148, adopted on December 16, 1968, approved the development plan and schedule for P-D(53) and also contained the conditions of approval for the development of said uses on the P-D(53) property; and

WHEREAS, City Council Ordinance No. 2046-C.S., which was introduced on June 9, 1981, and which became effective on July 9, 1981, amended the uses permitted in said P-D(53) Zone; and

WHEREAS, City Council Resolution No. 81-477, adopted on June 9, 1981, contained the conditions of approval for said P-D(53), including the uses permitted by Ordinance No. 2046-C.S.; and

WHEREAS, on December 7, 1981, by Resolution 81-255, the Planning Commission recommended to the City Council an amendment to the P-D(53) to allow inclusion of a Family Amusement Machine Center; and

WHEREAS, on January 5, 1982, by Resolution 82-5, the City Council overruled the Planning commission and denied the requested amendment, citing "...proximity of the proposed Amusement Machine Center to Beyer High School"; and

WHEREAS, on January 19, 1982, William Hughes, representing the applicants, requested a rehearing and the City Council by Resolution 82-136, waived the one year waiting period allowing for a reapplication; and

WHEREAS, on March 15, 1982, by Resolution No. 82-60, the Planning Commission recommended to the Council an amendment to P-D(53) to allow establishment of a Family Amusement Machine Center, as requested by the applicant; and

WHEREAS, City Council Resolution No. 82-310, adopted on April 13, 1982, overruled the recommendation to approve the amendment to P-D(53) to allow establishment of a Family Amusement Machine Center in conjunction with a skate shop in an existing building in P-D(53), due to the proximity of the proposed Amusement Machine Center to Beyer High School; and

WHEREAS, a verified application for an amendment to P-D(53) was filed by M & M Stone, Inc. on behalf of Sylvan Square Shopping Center, LLC on December 31, 2008, to allow for a medical dialysis center to be included as a permitted use for property located at 3500 Coffee Road; and

WHEREAS, a public hearing was held by the Planning Commission on March 23, 2009, in the Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 209-06, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. That the amendment to P-D(53), to allow for the medical dialysis center to be included as a permitted use as proposed, is required by public necessity, convenience, and general welfare for the following reasons:
  - a. The proposed amendment to P-D(53) will not increase the intensity of the current use of the property or development beyond that which is already allowed by the existing zoning of the site; and
  - b. The recommended conditions of approval will insure the proposed project will comply with all appropriate development standards and be compatible with surrounding land uses.
2. The proposed amendment to P-D(53), is consistent with the Modesto Urban Area General Plan, as the site is designated Commercial, which permits medical offices subject to compliance to City Standards.
3. The type of project is described in Chapter II of the Modesto Urban Area General Plan Master EIR (MEIR).
4. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.
5. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
6. Based on the Initial Study, the City of Modesto finds and determines:
  - a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
  - b. No new or additional mitigation measures or alternatives are required.

7. The Initial Study, Environmental Assessment No. EA/C&ED 2009-06, provides the substantial evidence to support finding numbers 3-6, noted above.

BE IT FURTHER RESOLVED by the Planning Commission that it recommends to the Council as follows: That Ordinance No. 2046-C.S. for P-D(53) be amended to replace the existing use list with the following uses:

1. Neighborhood Commercial (C-1) uses
2. Restaurants with bars

BE IT FURTHER RESOLVED by the Planning Commission that it recommends to the Council that the amendment to P-D(53) be subject to the following conditions:

1. All development shall conform to the site plan and parking survey titled "For Satellite HC, Space #21 – 3500 Coffee Road, Modesto, CA" as amended in red, stamped approved by the Planning Commission on March 23, 2009. The dialysis center will be allowed to operate utilizing 40 spaces.
2. Prior to issuance of a Building Permit, applicant shall submit a plan to upgrade the fire protection from being underground to above ground with a Double Check Detector Assembly with tamper switches and a metered by-pass in series with a double check valve per 2006 City of Modesto Standard Specifications 6.02 G-5, as acceptable to the City Engineer.
3. All Improvement plans shall be prepared, stamped and signed by a California Licensed Civil Engineer, acceptable to the City Engineer.
4. For all work within the public right-of-way, the owner/developer shall obtain an Encroachment Permit. Prior to issuance of this permit, all improvements 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, 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.
6. All medical and pharmaceutical waste must be disposed of in accordance with all Health and Safety codes and not discharged to the wastewater system without prior written approval from the City. Any identified proprietary generating waste streams within the facility should be plumbed separate prior to a final single connection into the City's wastewater system to accommodate pretreatment requirements. Purpose is to provide suitable monitoring and capture of potential wastewater impact discharges.
7. Prior to issuance of a Building Permit, the developer shall contact MID to coordinate service requirements for individual metered electric service for the proposed tenant(s), as required by the utility companies and the City Engineer or designee.

8. 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.
9. All conditions of previous Ordinances and Resolution P-D(53) not in conflict with this action herein shall remain in full force and effect.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on March 23, 2009, by Chris Tyler, who moved its adoption, which motion was seconded by Ted Brandvold and carried by the following vote:

Ayes:	Berglund, Brandvold, Gillum, Sanders, and Tyler
Noes:	None
Absent:	Bernal

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

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