

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2023-04

RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ST. JAMES ORTHODOX CHURCH TO ALLOW A MAXIMUM ONE HUNDRED FIFTY (150) FOOT BY ONE HUNDRED SIXTY (160) FOOT CEMETERY, WITH A MAXIMUM OF FIVE-HUNDRED FIFTY-FOUR (554) BURIAL PLOTS FOR THE EXCLUSIVE USE OF CHURCH PARISHIONERS, ON PROPERTY LOCATED IN THE R-1 (LOW DENSITY RESIDENTIAL) ZONING DISTRICT AT 815 MAZE BLVD., ALSO KNOWN AS ASSESSOR'S PARCEL NUMBER (APN) 029-024-041.

WHEREAS, an application for a Conditional Use Permit to allow a cemetery on a portion of church property located at 815 Maze Blvd., also known as Assessor's Parcel Number (APN) 029-024-041 was filed by Jim Freitas of Associated Engineering on behalf of St. James Orthodox Church on November 18, 2022; and

WHEREAS, Section 10-9.102 of Title 10, Zoning Regulations, of the Municipal Code authorizes the Board of Zoning Adjustment to grant Conditional Use Permits; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on February 23, 2023, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed project may be found Categorical Exempt from CEQA pursuant to Section 15061(b)(3), "The Commonsense Exemption" of the CEQA Guidelines; and,

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

1. The proposed conditional use permit is consistent with the objectives and requirements of Title 10 (Zoning Regulations) because:

The proposed one hundred fifty (150) foot by one hundred sixty (160) foot cemetery is intended for use by church members, and is an accessory use of the existing church, which is an allowed use in the R-1 (Low density Residential) zone with the granting of a Conditional Use Permit from the Board of Zoning Adjustment.

2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because:

The proposed use is an accessory use of the existing church, which is an allowed use in the R-1 (Low density Residential) zone with the granting of a Conditional Use Permit.

3. The proposed conditional use will not be detrimental to the public health, safety, or welfare or materially injurious to uses, properties or improvements in the vicinity because:

The proposed one hundred fifty (150) foot by one hundred sixty (160) foot cemetery will not be visible from Maze Boulevard, nor visible from surrounding properties as the cemetery site will be fenced on all four sides, screened by landscaping, and planted with trees. Additionally, the Church is required to obtain and maintain a state license (Certificate of Authority) for the operation of a private cemetery from the Department of Consumer Affairs, Cemetery and Funeral Bureau, and is prohibited from providing any other funeral services (e.g., preparation, storage, cremation) on site.

4. The proposed conditions of approval will ensure compatibility with the surrounding uses because:

The proposed conditions of approval require that: 1) the cemetery is limited for use by church members; 2) is required to be fenced and screened with landscaping, so as to not be visible from surrounding properties; 3) is restricted to a maximum size of one hundred fifty (150) feet by one hundred sixty (160) feet; 4) is restricted to a maximum of five-hundred fifty-four (554) burial plots; 5) Prohibited from providing any other funeral services (e.g., preparation, storage, cremation) on site; and 6) is required to obtain and maintain a state license (Certificate of Authority) for the operation of a private cemetery from the Department of Consumer Affairs, Cemetery and Funeral Bureau.

5. The proposed project may be found categorically exempt from CEQA. As the project is not proposing the construction of any buildings, it may be found exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), "The Commonsense Exemption." This exemption states that "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." There is no possibility that this project may have a significant effect on the environment and, therefore, the project is not subject to CEQA.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 815 Maze Blvd., also known as Assessor's Parcel Number (APN) 029-024-041 to allow a maximum one hundred fifty (150) foot by one hundred sixty (160) foot cemetery, with a maximum of five-hundred fifty-four (554) burial plots for the exclusive use of parishioners be granted subject to the following conditions:

1. Prior to any burials on the site, St. James Orthodox Church shall obtain and maintain a state license (Certificate of Authority) for the operation of

a private cemetery from the Department of Consumer Affairs, Cemetery and Funeral Bureau.

2. Prior to any burials on the site, St. James Orthodox Church shall plant the landscape screening on the west side of cemetery adjacent to the existing single-family residence; and install the proposed fence and landscape screening at the north end of the site; and plant the proposed trees (as shown on the site plan).
3. All development shall conform to the site plan as approved by the Board of Zoning Adjustment on February 23, 2023.
4. No other funeral services (e.g., preparation, storage, cremation) shall be permitted on site.
5. All landscaping and fences shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
6. Prior to the issuance of a Grading, Demolition Permit, Property Owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording as approved by the City Engineer.
7. 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.
8. Project approval shall become null and void five (5) years following the effective date of approval, unless a grading permit is issued (if necessary), the landscape screening (on the west side and the north side of the of cemetery), fencing, the trees shown on the site plan are planted.

Fire

9. Obtain a separate address for the cemetery, to assist the Fire Department in the event of an emergency.

Parks Planning & Development

10. Applicant shall submit Landscape and Irrigation (L&I) plans for review and approval by the City's Parks Planning and Development (PPD) Division for the cemetery. L&I planning shall meet the current State of California Model Water Efficient Landscape Ordinance (MWELo) requirements. Modesto Municipal Code (MMC) requirements and City of Modesto Standards at time submittal.

11. Applicant shall provide a minimum four (4) foot side landscape setbacks adjacent to the cemetery.
12. Applicant shall install climbing vines on all walls, in a landscape planter, around any trash enclosures and masonry walls visible from Maze Boulevard.

Modesto Irrigation District (MID)

13. Irrigation Modesto Irrigation District's (MID) Water Operations staff would like to note the following irrigation facilities that may lie within the project area. Please see the attached project site map for clarification purposes.
 - (a) MID holds a one hundred (100) foot right-of-way for MID's Lateral No. 4 along the north property line of APN: 029-024-040.
 - (b) There is an existing twelve (12) inch cast-in-place concrete private pipeline that lies along the northern property line of APN: 029-024-040.
14. In regard to the facilities listed above, MID's Irrigation Operations staff has the following recommendations and requirements:
 - (a) Should the proposed cemetery extend north into APN: 029-024-040, the size, depth, and location of the existing irrigation facilities must be located and verified in the field and shown on the proposed plans.
 - (b) Plans for the proposed project area must be submitted to MID's Civil Engineering Department for review and approval. MID's irrigation standard details can be found online at https://www.mid.org/isc/documents/M.I.D.Standards_OutsideMID.pdf or can be provided upon request.
 - (c) Water Operations staff recommends a pre-consultation meeting to discuss MID irrigation requirements. MID irrigation standard details are available online or can be provided upon request.
 - (d) All work that may impact the existing irrigation facilities must be completed during the non-irrigation season (typically March 1 to November 1).
 - (e) Upon development of the cemetery, the Applicant must contact MID's Water Operations Department at (209) 526-7562 to request a Sign-Off of Irrigation Facilities form for APN: 029- 024-041. Should the proposed cemetery extend north into APN: 029-024-040, the Applicant must request a sign-off of irrigation facilities form for APN: 029-024-040.
15. The attached drawing shows the approximate location of the District's existing electrical facilities within or adjacent to the project area.
 - (a) High voltage is present within and adjacent to the project area. This includes 12,000 volts overhead and underground primary,

6,900 volts underground primary, as well as overhead and underground secondary facilities. Use extreme caution when operating heavy equipment, using a crane, ladders, scaffolding, handheld tools, or any other type of equipment near the existing MID electric lines and cables. Workers and equipment should always maintain a distance no less than 10 feet from overhead facilities. Assume all overhead and underground electric facilities are energized.

- (b) Existing MID easements for protection of overhead electrical facilities are to remain. Overhead secondary cable shall be protected by a minimum 20' wide easement centered on the overhead cable. Overhead primary cable shall be protected by a minimum 30' wide easement centered on the overhead cable.
- (c) Existing MID easements for protection of underground electrical facilities are to remain. Underground secondary cable shall be protected by a minimum 5 foot. wide easement centered on the underground cable. Underground primary cable shall be protected by a minimum 10 foot. wide easement centered on the underground cable.
- (d) In conjunction with related site improvement requirements, existing overhead, and underground electric facilities within or adjacent to the proposed project shall be protected, relocated, or removed as required by the District's Electric Engineering Department. Any relocation or installations shall conform to the District's Electric Service Rules. Customer will be responsible for all MID's cost associated with the development. •
- (e) The contractor shall verify actual depth and location of all underground utilities prior to start of construction (or any burials). Notify "Underground Service Alert" (USA) (Toll Free 800-227-2600) before trenching, grading, excavating, drilling, pipe pushing, tree planting, post-hole digging, etc. USA will notify all utilities to mark the location of their underground facilities.
- (f) Due to supply chain disruptions beyond MID's control, please contact the Engineering Design Group to ensure adequate materials are available for timely completion of the project.
- (g) Existing electric service may not be adequate for the proposed project development. Prior to any construction a full set of construction plans must be submitted to Electrical Engineering Design Group. Please contact Modesto Irrigation District at (209) 526-7337 or (888) 335-1643 and ask for the Electrical Engineering Design Group to coordinate project/cost requirements.

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 February 23, 2023, by Board Member Niskanen, who moved its adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

Ayes:	Blom, Niskanen, Goriel, Riddle, Vohra
Noes:	None
Absent:	Desai
Recused:	None

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

Signed copy of file in CEDD

Jessica Hill, Secretary