

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2023-05

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO THE CHURCH OF JESUS CHRIST LATTER DAY SAINTS FOR A NEW TEMPLE BUILDING WITH SPIRE, FOR A TOTAL HEIGHT OF 115-FEET, PROPERTY LOCATED AT 4300 DALE ROAD

WHEREAS, an application for a Conditional Use Permit for a new 32,000 sf temple with a spire, for a total height of 115-feet, to be located to the northeast of the existing chapel building of the church, was filed by the Church of Jesus Christ Latter Day Saints on December 28, 2022; and

WHEREAS, the site is zoned SP as part of the Kiernan Business Park Specific Plan, and is within the Mixed Use 3 (MU-3) land use designation of the Specific Plan's Land Use Diagram, which allows for uses as permitted in the Mixed Use (MU) land use designation of the Specific Plan and Medium-High Density Residential Uses of 15-16 dwelling units per acre; and

WHEREAS, the maximum building height standard of the Mixed Use land use designation of the Specific Plan is four stories in height or 55-feet in height for buildings, and seven stories or 75-feet in height for hotel uses; and

WHEREAS, Section 10-4.401 of the Modesto Municipal Code allows that exceptions to height limits may be considered with a Conditional Use Permit by the Board of Zoning Adjustment; and

WHEREAS, Section 10-9.102 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 23, 2023, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Board of Zoning Adjustment certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2023-06, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2014042081) 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 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 site is zoned as SP as part of the Kiernan Business Park Specific Plan, which allows for churches, and allows for exceptions on maximum building heights with a Conditional Use Permit from the Board.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because the temple is

consistent with the Mixed Use (MU) land use designation of the General Plan, which allows for church uses.

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 all construction as a condition of approval will be required to meet all applicable Zoning Codes and Standards for the City of Modesto, as well as all applicable building codes and regulations.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because the new temple is within the grounds of the existing church site and conditions as applied will ensure conformity to applicable Zoning Codes, City Standards, and building codes and regulations.
5. An Initial Study was prepared by the City of Modesto that analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report.
6. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code, that was not identified in the Master EIR.
7. No new or additional mitigation measures or alternatives are required.
8. The subsequent project is within the scope of the project covered by the Master EIR.
9. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.
10. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, and no new information, which was not known and could not have been known at the time that the Master EIR was certified as complete, has become available.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for the new 32,000 sf temple with a 115-foot spire be granted subject to the following conditions:

1. Prior to the issuance of a building permit, all development shall conform to the development plan and building elevations titled "Modesto California Temple", stamped approved by the Board of Zoning Adjustment, on March 23, 2023.

2. Prior to issuance of a building permit, any variation from the approved site plan or building elevations on file with the City must be reviewed and approved by the Director of Community and Economic Development.
3. All signs shall comply with the sign requirements of the C-2 Zone, with the following modifications in accordance to the development standards for signs within the Mixed Use area of the Specific Plan (Section IV, Pages 11-12):
  - a. Freestanding Identification Signs shall be monument type only and shall be comprised of individual letters or logo sections, with no exposed mounting hardware. All type and graphics shall have a minimum thickness of 2" and be of a color that contrasts with the background. Suitable materials include acrylic, aluminum, brass and painted steel, painted metal, porcelain enamel, or a high-quality plastic. Wood and painted backgrounds are prohibited. Sign shall be externally illuminated.
  - b. Prior to issuance of a sign permit, individual sign plans for the project shall be submitted for separate review and approval prior to installation.
4. Prior to issuance of a building permit, a lighting plan shall be submitted for review and approval by the Director of Community and Economic Development or designee. The lighting plan shall demonstrate the following:
  - a. Parking lot light fixtures designed to confine the light to the site with minimal light spillage to adjacent uses, and located to assure adequate light levels while avoiding adverse impacts to surrounding buildings.
  - b. The design of light fixtures and their structural supports architecturally integrated into the design of a structure and compatible with the main structures on the site.
  - c. Along pedestrian corridors, the use of low mounted bollard light standards, which reinforce pedestrian scale, shall be used. Steps and ramps should be illuminated wherever possible, with built-in light fixtures. Particular attention should be given to the pedestrian access to the south, to increase visibility and security at the access.
  - d. Lighting shall adhere to all other design standards of the Mixed Use (MU) land use designation as outlined by Section V-B-4 the Specific Plan.
5. Prior to occupancy of any structure, striping of parking stalls, aisle and driveways shall conform to the provisions of Modesto Municipal Code Section 10-5.105, Parking Lot Design Standards.

6. Prior to Certificate of Occupancy of any structure, all utility services such as meters, vaults, sprinklers, etc., and all service areas, including loading docks, shall be screened by a combination of walls and/or landscape materials including trees, shrubs, vines, and groundcovers. Other considerations should include existing walls and fences which may be softened to minimize height and mass with the use of vines and shrubs. Proposed utility vaults should be shown on site plans so that proper landscaping can be determined. Transformers, where required, shall be screened as described for trash enclosures, or by using landscape screening devices such as five-gallon shrubs at three foot (3') on center, minimum.
7. Construction drawings shall demonstrate that all building drainage gutters, down spouts, vents, etc. located on exterior walls, are be completely concealed from public view or designed to be architecturally compatible (decorative) with the exterior building design and color to the satisfaction of the Director of Community and Economic Development.
8. Exterior building elevations showing building wall materials, roof types, exterior colors and appropriate vertical dimensions shall be included in the development construction drawings.
9. Construction drawings shall demonstrate that new ladders for roof access are mounted on the inside of the building to the satisfaction of the Director of Community and Economic Development.
10. At the time of development, all existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the Utility Companies and City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be reserved as required.

#### PUBLIC WORKS, UTILITIES/LAND DEVELOPMENT ENGINEERING

11. Any public improvements that are missing, damaged or not to current City standards shall be designed and constructed per City standards in accordance with City Code (Article 7-1.701). Such improvements may include, but not be limited to curb & gutter, drive approach, sidewalk, ADA access ramps, fire hydrants and street lights. All public improvement plans shall be designed by a Registered Engineer, reviewed and approved by the City Engineer prior to issuance of an Encroachment permit.
12. Prior to the issuance of a building permit, improvement plans shall demonstrate the following to the satisfaction of the City Engineer or designee:
  - a. Connection to either 10-inch or 16-inch water lines along Dale Road;
  - b. Connection to 8-inch sewer line with installation of proposed sewer lift station on the site;

- c. On-site handling and treatment of storm water in accordance to City Standards and the most current storm water guidance manual for the City of Modesto.
- d. Dedication of approximately 21-feet and six-inches (21-ft 6-in) of right-of-way along the Dale Road frontage to match the existing right-of-way of the property to the south, with installation of new curb, gutter, sidewalk, pavement, traffic striping and new driveway entrances in accordance with City Standards to the satisfaction of the City Engineer.
- e. Driveway throat depth for the southernmost driveway shall meet City Standards of 50-feet from the front property line to the nearest parking space as required for an Arterial Street.

INFRASTRUCTURE FINANCE

- 13. Prior to the issuance of a building permit, (or at discretion of the Director of Community and Economic Development or designee) developer shall take all actions reasonably necessary to establish a mechanism acceptable to the City for funding one or more capital facilities or services, set forth, but not limited to, in the Kiernan Business Park Specific Plan Infrastructure Financing Plan, which may include direct lump sum payment to the City, establishment of a new Mello-Roos Community Facilities District ("CFD"), annexation to one or more existing CFDs, or other financing mechanism approved by the City in its sole discretion.
  - a. One of the critical facilities called out in the existing Kiernan Business Park, South CFD was the storm drainage infrastructure required for public street drainage on the east half of Dale Road along the project frontage. Therefore, the project is required to install additional storm drainage facilities to meet City standards for storm drainage sized to accommodate the existing and proposed improvements in the public right-of-way and provide the funding mechanism for maintenance as described above.

PARKS AND RECREATION, PARKS PLANNING

- 14. Applicant shall submit Landscape and Irrigation (L&I) plans for review and approval by the City's Parks Planning and Development (PPD) Division. L&I plans 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 of submittal.
- 15. Applicant shall install climbing vines on all walls, in a landscape planter, around the trash enclosure to discourage tagging.
- 16. Low Impact Development (LID) control and treatment measures shall be planted with vegetation for erosion protection and sediment entrapment to collect/treat storm water run-off before entering the storm drain system. Storm drainage basins shall be appropriately landscaped and

irrigated to address the specific type of storm water control measure.  
Provide total square feet of the landscape area in project information.

17. Applicant shall install bicycle parking racks as part of the project development per MMC and Green Building Standards Code.

#### PUBLIC WORKS, SOLID WASTE

18. Prior to issuance of a building permit, improvement and site plans shall demonstrate the following:
  - a. New trash enclosures are large enough to house three containers for Garbage, Organics, and Recycling (MMC 5-5.109 and MMC 5-5.113).
  - b. Provide adequate room for waste collection trucks to pick up and empty containers to minimize chance of accidents and spillage (MMC 5-5.113 (c))
  - c. Indication of the entrance/exit for the solid waste truck. Follow the following requirements:
    - i. Provide a minimum vehicle turning radius of 34 feet for the inside wheel and 50 feet for the outside wheel
    - ii. Do not allow parked cars and/or parking spaces to block access to the solid waste areas.
    - iii. Provide a 25' overhead clearance above the enclosure area so that hauler vehicles can access and empty the containers therein.
    - iv. Solid Waste enclosures should be located for convenient tenant access. Enclosures should not be blocked with parking spaces or interfere with on-site circulation.
    - v. Solid Waste enclosures should be constructed with masonry walls and the enclosure gate should be of metal with heavy duty hardware. Chain link is not appropriate.
    - vi. The enclosure(s) shall be secured to prevent unauthorized collection, tampering, and unlawful placement of garbage, organics, or recyclable materials, but must be accessible to collection personnel during herein before stated collection hours. Additional charges may be assessed, as determined by the solid waste collection company, for additional trips to service a previously locked enclosure (MMC 5-5.113 (e)).
19. The trash enclosure should have a stress pad installed in front of the enclosure site. Improvement plans shall follow the below guidelines:
  - a. The pad should be engineered to withstand up to 20,000 pounds of direct force.
  - b. The solid waste area pad and apron should slope 1/8 inch per foot to facilitate proper drainage.

- c. The apron surface should be the same elevation as the pad threshold and the surrounding surfaces.
  - d. Enclosure is connected to a sanitary sewer (MMC 5-5.103 (yy)).
20. Garbage, recycling, and organic standard containers shall not be placed or allowed to remain in or on any street or alley public right-of-way, except within twenty-four (24) hours prior to and following service day or as otherwise authorized by the Public Works Director (MMC 5-5.120).
21. Container shall be stored inside of an enclosure or solid waste room at all times expect on collection day (MMC 5-5.120 (c)).

#### FIRE DEPARTMENT

22. Prior to issuance of a building permit, site and improvement plans shall demonstrate the following:
- a. Driving paths shall accommodate an inside turning radius of 25-feet and an outside turning radius of 45-feet.
  - b. No parking shall be allowed on either side of the two northernmost 20-foot wide drive lanes leading from Dale Road to the main entry of the temple. Lanes shall be clearly marked as "No Parking, Fire Lane" to the satisfaction of the Fire Marshall or designee.
  - c. No parking shall be allowed on either side of the 24-foot wide drive lane along the east side of the temple. Lane shall be clearly marked as "No Parking, Fire Lane" to the satisfaction of the Fire Marshall or designee.
  - d. Any vehicle gates shall be equipped with a Knox gate access submastered for the Modesto Police Department.
  - e. Fire sprinkler systems shall be a 1603 fire sprinkler setup with FDC, PIV and single check valve.
  - f. Fire water line shall be sized and of material in accordance to Modesto Standard Specification 16.02 B.
  - g. Demonstrate a 1602-A DDCV for fire water, with provision of a Modesto Standard diagram.

#### GENERAL CONDITIONS

23. All construction documentation shall be coordinated for consistency, including but not limited to, architectural, structural, mechanical, electrical, plumbing, landscape and irrigation, grading, utility and street improvement plans. All such plans shall be consistent with the approved entitlement plans on file with the Planning Department.
24. At the time of issuance of a building permit, the Developer shall pay development impact fees at the established rate. Such fees may include

but are not limited to, sewer and water connection fees, community facility fees, school fees, building permit and plan check fees.

25. Prior to start of construction, all-weather, hard-surfaced roadways shall be constructed and maintained free of obstructions at all times during construction as required by Director of Community and Economic Development.
26. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
27. 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 following conditions are mitigation measures from the City of Modesto Urban Area General Plan Master EIR (MEIR) that are applicable to the project:

28. AQ-100. Reduce particulate emissions from construction, grading, excavation, and demolition to the maximum extent feasible in accordance with the requirements of SJVAPCD Regulation VIII. Regulation VIII was adopted to reduce the amount of particulate matter suspended in the atmosphere as a result of emissions generated from anthropogenic (man-made) fugitive dust sources. (Policy VII.H.2.jj)
29. AQ-101. Require all access roads, driveways, and parking areas serving new commercial and industrial development to be constructed with materials that minimize particulate emissions in accordance with the requirements of SJVAPCD Regulation VIII and are appropriate to the scale and intensity of use. (Policy VII.H.2.kk)
30. AQ-103. Effectively stabilize dust emissions using water, chemical stabilizer / suppressant, cover with a tarp or other suitable cover or vegetative ground cover, all disturbed areas, including storage piles, which are not being actively utilized for construction purposes. (Policy VII.H.2.mm)
31. AQ-104. Effectively stabilize dust emissions using water or chemical stabilizer / suppressant, all onsite unpaved roads and off-site unpaved access roads. (Policy VII.H.2.nn)
32. AQ-105. Effectively control fugitive dust emissions utilizing application of water or by presoaking all land clearing, grubbing, scraping, excavation,

land leveling, grading, cut & fill, and demolition activities. (Policy VII.H.2.oo)

33. AQ-107. When materials are transported off site, cover all materials, or effectively wet them to limit visible dust emissions, and maintain at least six inches of freeboard from top of container. (Policy VII.H.2.qq)
34. AQ-108. Limit operations or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.) (Policy VII.H.2.rr)
35. AQ-109. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, effectively stabilize said piles for fugitive dust emissions utilizing sufficient water or chemical stabilizer / suppressant. (Policy VII.H.2.ss)
36. AQ-110. Within urban areas, immediately remove trackout when it extends 50 or more feet from the site and at the end of each workday. (Policy VII.H.2.tt)
37. AQ-111. Prevent carryout and trackout for any site with 150 or more vehicle trips per day. (Policy VII.H.2.uu)
38. AQ-112. Limit traffic speeds on unpaved roads to 15 mph. (Policy VII.H.2.vv)
39. AQ-113. Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent (1%). (Policy VII.H.2.ww)
40. AQ-114. Install wheel washers for all exiting trucks, or wash all trucks and equipment leaving the site. (Policy VII.H.2.xx)
41. AQ-115. Install wind breaks at windward side(s) of construction areas. (Policy VII.H.2.yy)
42. AQ-116. Suspend excavation and grading activity when winds exceed 20 mph (regardless of windspeed, an owner/operator must comply with Regulation VIII's 20 percent opacity limit). (Policy VII.H.2.zz)
43. AQ-117. Limit the area subject to excavation, grading, and other construction activity at any one time. (Policy VII.H.2.aaa)
44. Noise-4. Implement noise-reducing construction practices as conditions of approval where substantial construction-related noise impacts would be likely to occur, such as with extended periods of pile driving, or where construction is expected to continue or where sensitive receptors would be affected by construction noise. Conditions of approval may include, but are not limited to:
  - Require construction equipment, including air compressors and pneumatic equipment to have properly maintained mufflers;

- Require impact tools to be equipped with shrouds or shields;
  - Require that the quietest equipment available be used; and,
  - Require selection of haul routes that affect the fewest number of people. (Policy VII-G.3.b)
45. SD-10, FWQ-11. Construction activities shall comply with the requirements of the City's Stormwater Management Plan under its municipal NPDES stormwater permit, and the State Water Resources Control Board's General Permit for Discharges of Storm Water Associated with Construction Activity. (Policy VI.G.3)
46. SD-12, FWQ-13. Ensure that new development complies with the City of Modesto's Stormwater Management Program: Guidance Manual for New Development Stormwater Quality Control Measures. (Policy VI.G.5)
47. SD-13, FWQ-14. Require new development to implement an appropriate selection of permanent pollution control measures in accordance with the City's implementation policies for the municipal NPDES stormwater permit. (Policy VI.G.6)
48. SD-15, FWQ-16. Integrate Low Impact Development principles into proposed development projects' design. Low Impact Development is a storm water management and land development strategy that promotes conservation and use of natural on-site features combined with engineered small-scale hydrologic devices. In designing development projects, minimize the amount of impervious surface in order to maximize on-site infiltration of stormwater runoff and minimize the potential for storm water runoff from the site. (Policy VI.G.8)
49. HM-3. Comply with all existing federal and state laws which regulate the generation, transportation, storage, and disposal of hazardous materials. (Policy VI.M.1)

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 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 March 23, 2023, 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 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 23, 2023, by Vohra, who moved its adoption, which motion was seconded by Riddle and carried by the following vote:

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

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

Signed copy on file in CEDD

Jessica Hill, Secretary