

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2023-06

RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ALLOW NINE (9) TRANSITIONAL/SUPPORTIVE HOUSING UNITS FOR FAMILIES ON A PORTION OF A 1.58-ACRE CHURCH PROPERTY LOCATED AT 225 EAST ORANGEBURG AVE., ALSO KNOWN AS ASSESSOR'S PARCEL NUMBER (APN) 031-003-077

WHEREAS, the City of Modesto has received an application for a Conditional Use Permit to allow nine (9) supportive housing units with nine (9) parking spaces on a portion of church property located at 225 East Orangeburg Ave., also known as Assessor's Parcel Number (APN) 031-003-077; submitted by David Elliot on behalf of the Modesto Free Will Baptist Church on January 23, 2023; 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 April 27, 2023, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed project may be found categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332, "In-fill Development Projects" based on the findings in the staff report; 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 nine (9) supportive family housing units with nine (9) parking spaces on a portion of church owned property located at 225 East Orangeburg Ave. is consistent with the requirements of Title 10 as the project will meet the required development standards for the R-1 zone. Additionally, as the project is proposed on a property currently developed with a church and will be operated by the church and their partners, the project may be allowed with the approval of a Conditional Use Permit by the Board.

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

The project site is located within the Mixed Use (MU) General Plan Designation. This designation is intended for areas that are already developed and that contain a mixture of residential, commercial, office, and/or institutional. As the project site is currently developed with a church and proposes supportive housing units (which is a residential use) the project is consistent with the Mixed Use designation. Further, as one

(1) dwelling unit exists on the site (the caretaker's home), the addition of nine (9) supportive housing units for a total of ten (10) units may be found consistent with the allowed density.

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 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 in addition to the required conditions in the attached resolution, the applicant has agreed to construct an eight (8) foot tall CMU (concrete masonry unit) wall along the east property line beginning at the rear property line and extending for one-hundred-twenty (120) feet. This wall will be required to be completely built, prior to the Certificate of Occupancies being issued for the housing units. The applicant agreed to this condition in response to concerns expressed by adjacent church members regarding the safety and privacy of school children using the playground on their property.

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

Among other requirements relating to landscaping, fire department access and safety, landscaping, solid waste, sewer and storm water runoff, the proposed conditions of approval also require that an eight (8) foot tall CMU (concrete masonry unit) wall be built along the east property line (beginning at the rear property line and extending for one-hundred-twenty (120) feet). This wall will be required to be completely built, prior to the Certificate of Occupancies being issued for the housing units. These conditions ensure that the project will be compatible with the surrounding uses.

5. The proposed project may be found categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332, "In-fill Development Projects."

Class 32 consists of projects characterized as in-fill development. The project meets this requirement as: (a) It is consistent with the requirements of Title 10 and the Mixed Use designation of the General Plan; (b) It occurs within the City of Modesto on a 1.58-acre project site that is bordered by single-family to the north; single-family and senior apartments to the south (across Orangeburg Avenue); parking areas, a playground, and another church on the east; and professional offices on the west; (c) the site has no value as habitat for endangered, rare or threatened species as it is improved with a church, a single-family structure (housing for the on-site caretaker), and areas for parking. Additionally, the unimproved areas are previously disturbed and planted with ornamental trees and ground cover; (d) approval of the project would not result in any significant effects relating to traffic, noise, air

quality, or water quality; and (e) the site can be adequately served by all required utilities and public services. Storm water, however, will be managed and stored on-site per City Standards.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit, for 225 E. Orangeburg, also known as Assessor's Parcel Number (APN) 031-003-077, to allow nine (9) supportive housing units on a portion of the church's property. The housing units shall range in size from four-hundred (400) square feet to a maximum of eight-hundred (800) square feet. The total combined living area (square footage) of all housing units shall not exceed four-thousand-four-hundred (4,400) square feet. This conditional use permit shall be granted subject to the following conditions:

1. The housing units shall be sited to provide a minimum ten (10) foot rear setback from the northerly property line and a minimum five (5) foot side yard setback from the easterly property line.
2. The applicant shall install an eight (8) foot tall, CMU (Concrete Masonry Unit) wall along the project's east property line beginning at the rear property line and continuing for a minimum distance of one-hundred and twenty (120) feet. This wall shall be completed prior of the issuance of any certificates of occupancy for the housing units.
3. All development shall conform to the site plan as approved by the Director or their designee.
4. All landscaping and fences shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
5. 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.
6. Project approval shall become null and void five (5) years following the effective date of approval, unless a grading permit is issued (if necessary), and the landscape screening (on the west side and the north side of the of cemetery), fencing, and the trees shown on the site plan are installed.

#### Fire

7. Building plans shall show the location of all nearby on-site and off-site fire hydrants.

8. One or more on-site fire hydrants will be needed. Piping shall be shown on plans.
9. Fire sprinklers are required. A new waterflow reading is required.
10. The project shall be built and plans shall be in accordance with 2022 California Building Codes.
11. Building Plans, at time of building permit submittal, shall declare if these are nine separate R-3 SFD's or one nine-unit R-2 apartment complex. Fire extinguishers shall be required per the California Fire Code, unless these are SFD's.
12. The project shall comply with California Building Code Table 705.5, particularly as it relates to property line and house separation distance, and distance between housing.
13. Building plans shall specify "NO PARKING FIRE LANE" in the driveway.
14. The rear of the northeastern-most house shall be no more than 350' (150' + 200') from Orangeburg, as measured up the driveway, and diagonally across to said rear of the northeastern-most house. **If longer than that then an approved fire engine turnaround will be needed.**
15. **The driveway must be at least 20' wide not including parking.** The driveway must be suitable to support a fire engine.
16. Applicant shall provide addresses in compliance with California Fire Code section, CFC 505.1 prior to issuance of a Certificate of Occupancy.

Parks Planning & Development

17. 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.
18. Applicant shall provide a minimum fifteen-foot (15') front landscape setback.
19. Applicant shall provide a minimum ten-foot (10') rear landscape setback.
20. Applicant shall install street trees every thirty-five feet (35') to forty feet (40') on center along sidewalks, and within seven feet (7') of sidewalks on E. Orangeburg Avenue.
21. Applicant shall install parking lot shade trees per MMC requirements; one (1) shade tree for every eight (8) parking spaces, continuous and

intermittent stall locations, within seven feet (7') of stalls and achieve fifty percent (50%) surface shade requirements.

22. Applicant shall install the required three foot (3') high screening for vehicle headlights in the parking areas along E. Orangeburg Avenue.
23. Applicant shall provide signage with appropriate landscaping for Clear Vision Triangles at driveway entrances along E. Orangeburg Avenue. Within the triangle, the area between three (3) and eight (8) feet in height measured from top of curb adjacent to landscape shall be clear.
24. Applicant shall install climbing vines on all walls, in a landscape planter, around the trash enclosures and masonry walls visible to E. Orangeburg Avenue.
25. 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.
26. Applicant shall install bicycle parking racks as part of the project development per MMC 10-5.103(d) and Green Building Standards Code.

#### Building Safety & Neighborhood Preservation

27. Plans submitted to the Building Safety Division must be drawn to meet 2022 California Building Code standards, including foundation engineering, title 24 calculations, Photovoltaic systems plans and aging in place requirements.

#### Solid Waste Division – Public Works Department

28. If an enclosure will be used, please follow the below requirements:
  - a. The enclosure shall be large enough to house three containers for Garbage, Organics, and Recycling (MMC 5-5.109 and MMC 5-5.113).
  - b. Solid Waste enclosures should be located for convenient tenant access. Enclosures shall not be blocked with parking spaces or interfere with on-site circulation.
  - c. Solid Waste enclosures shall be constructed with masonry walls and the enclosure gate shall be of metal with heavy duty hardware. Chain link is not appropriate. Finishes and colors for enclosures shall be compatible with the buildings.
  - d. 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)).
- e. A stress pad shall be installed in front of the solid waste enclosure area. Please revise the plan following the below guideline:
    - (1) The pad shall be engineered to withstand up to 20,000 pounds of direct force.
    - (2) The solid waste area pad and apron shall slope 1/8 inch per foot to facilitate proper drainage.
    - (3) The apron surface shall be the same elevation as the pad threshold and the surrounding surfaces
  - f. "Solid Waste Enclosure" means a walled structure with a solid cover for the storage of Solid Waste with a drainage system connected to the sanitary sewer and wash system that are adequate to accommodate anticipated waste generated at the Premises. (MMC 5-5.103 (cr)).
29. If a cart system will be used, applicant shall identify collection location for Garbage, Organics, and Recycling and do all of the following:
- a. 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))
  - b. Indicate the circulation plan for this site on submitted building plans or as a separate circulation plan. Such plans shall show the entrance/exit for the solid waste truck conforming to the following requirements:
    - (1) Provide a minimum vehicle turning radius of 34 feet for the inside wheel and 50 feet for the outside wheel
    - (2) Do not allow parked cars and/or parking spaces to block access to the solid waste areas.
    - (3) Provide a 25 foot overhead clearance above the enclosure area so that hauler vehicles can access and empty the containers therein
30. 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).
31. Containers shall be stored inside of an enclosure, solid waste room, or at the home at all times except on collection day (MMC 5-5.120 (c)).

Land Development Engineering - Community & Economic Development

32. 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 include but are not 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 and reviewed and approved by the City Engineer prior to issuance of an Encroachment permit.
33. Sewer. There are two existing sewer service connections to the subject parcel from the 6-inch sewer main in Orangeburg Avenue. If a new or an upgrade to any sewer service connections is requested, then applicable sewer connection fees shall be paid and an encroachment permit issued from the City, prior to any work being done in the public right of way.
34. Water. There are two existing water service connections to this parcel from the 10-inch main in East Orangeburg Avenue. If a new connection or an upgrade to the existing ones is requested, then applicable water connection fees shall be paid and an encroachment permit issued from the City prior to any work being done in the public right of way.
35. Storm Drain. The proposed project is located in an area with no City storm drain mains to receive off-site drainage. Therefore, any storm water generated from this development shall be managed and stored on-site according to the City's Standard Specifications and current low impact development standards.
36. Storm water Quality.
  - a. The proposed project includes significant redevelopment (greater than 5,000 square feet on a previously developed site) and is therefore considered a Priority Project.
  - b. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit improvement plans conforming to design requirements of the most current edition of the City of Modesto Guidance Manual for Development, Stormwater Quality Control Measures and the City of Modesto Municipal Code.
  - c. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan to integrate Low Impact Development (LID) principles into the project design. The plan shall retain, treat, and infiltrate the first 0.5" of stormwater runoff on site, and incorporate pervious landscape features into the project design wherever possible.
  - d. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grass swale, bioretention, vegetative strip, or other approved proprietary device) to remove pollutants from the first 0.5" of stormwater run-off from site.

- e. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan for trash enclosures to be sufficiently elevated to prevent stormwater run-on from parking lot.
37. Prior to the issuance of a Grading, Demolition, 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.

Modesto Irrigation District (MID)

38. 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 Attachment A- Irrigation Operations for clarification purposes.
- a. There is an existing abandoned-in-place thirty (30) inch concrete Improvement District pipeline (Atwood ID – ID No. 37) that lies along the north parcel line of the property
  - b. Should the proposed project impact the existing abandoned-in-place facilities, the pipeline must be saw cut and plugged with a concrete cap on each side of the project limit. See MID Standard Detail C 55 for reference.
  - c. MID's irrigation standard details can be found online at <https://www.mid.org/isc/documents/M.I.D.StandardsOutsideMID.pdf> or can be provided upon request.
  - d. The size and location of the existing abandoned-in-place pipeline must be located and verified in the field and shown on the proposed plans.
  - e. The proposed plans must be submitted to MID's Civil Engineering Department for review and approval. Civil Engineering staff recommends a pre-consultation meeting to discuss MID requirements.
39. Electrical. Attachment B – MID Electric shows the approximate location of the District's existing electrical facilities within or adjacent to the project area.
40. High voltage is present within and adjacent to the project area. This includes 12,000 volts overhead transmission, 12,000 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.
41. The contractor shall verify actual depth and location of all underground utilities prior to start of construction. 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.

42. MID requires that any trenching maintain a 1:1 horizontal distance from any existing pole, determined by the depth of the trench. If trenching encroaches on this requirement, the Contractor shall contact the MID Electric Engineering Department to brace any effected poles during the trenching process. The cost of any required pole bracing will be assumed by the requesting party. Estimates for bracing any existing poles will be supplied upon request.
43. Existing MID easements for protection of overhead and underground electrical facilities shall remain. Overhead secondary cable is protected by a minimum 20-foot wide easement centered on the overhead cable. Overhead primary cable is protected by a minimum 30-foot wide easement centered on the overhead cable. Underground secondary cable is protected by a minimum 5-foot wide easement centered on the underground cable. Underground primary cable is protected by a minimum 10-foot wide easement centered on the underground cable.
44. MID easements for protection of overhead and underground electrical facilities are required. MID overhead secondary cable shall be protected by a minimum 20 foot wide easement centered on the overhead cable. Overhead primary cable shall be protected by a minimum 30 foot wide easement centered on the overhead cable. MID underground secondary cable shall be protected by a minimum 5 foot wide easement centered on the underground cable. MID underground primary cable shall be protected by a minimum 10 foot wide easement centered on the underground cable. When underground cable is not located in the Road Right of Way or within the PUE along the street frontage a MID easement is required to protect the existing underground electrical facilities and maintain necessary safety clearances.
45. 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 Service Rules. Applicant will be responsible for all MID's cost associated with the development.
46. Existing electric service may not be adequate for the proposed 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.

#### Utilities Department

47. Storm Drainage. Per City Standards, the site must store 100% of the 100-year 24-hour storm (R=2.88") volume on-site, which must percolate within 48 hours. City Pollution prevention and control guidelines must also be adhered to.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on April 27, 2023, by Board Member Goriel, who moved its adoption, which motion was seconded by Board Member Vohra and carried by the following vote:

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

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

Signed copy on file in CEDD

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Jessica Hill, Secretary