

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2023-08

A RESOLUTION GRANTING A VARIANCE TO MODESTO HOLDING COMPANY TO PERMIT A PREVIOUSLY-APPROVED FREEWAY-ORIENTED FREESTANDING SHOPPING CENTER SIGN TO HAVE A TENANT PANEL LARGER THAN 150 SQUARE FEET, ALLOWING FOR A TOTAL SIGN AREA OF 90 SQUARE FEET LARGER THAN THE MAXIMUM OF 700 SQUARE FEET IN TOTAL SIGN AREA, LOCATED ON ZEFF ROAD NORTHWEST OF PECOS AVENUE

WHEREAS, on February 25, 2021, by Resolution No. 2021-01 the Board of Zoning Adjustment approved a Conditional Use Permit to allow for a freeway-oriented freestanding sign of a maximum sign area of 700 square feet of sign area plus 100 square feet for the shopping center name and a maximum height of 90 feet; and

WHEREAS, Section 10-6.108(h)(5) allows that for freeway-oriented shopping center signs, no individual tenant panel shall exceed 150 square feet in area; and

WHEREAS, Section 10-6.107 Table 6.1-2 allows that the total sign area of a freeway-oriented shopping center sign for shopping centers 20 acres or more be no larger than 700 square feet in area, plus an additional 100 square feet for the center's name; and

WHEREAS, Section 10-108(k)(2)(iii) allows that freestanding gas station fuel price signs shall be no higher than fourteen (14) feet in height; and

WHEREAS, an application for a variance from the provisions of Section(s) 10-6.107 Table 6.1-2, 10-6.108(h)(5) and 10-108(k)(2)(iii) of the Modesto Municipal Code to permit a tenant panel in excess of 150 square feet in area, and a digital fuel price sign higher than the fourteen feet maximum height allowed, at the previously-approved freeway oriented freestanding shopping center sign was filed by Modesto Holding Company on July 14, 2023; and

WHEREAS, the developer has also under separate application requested a Conditional Use Permit (Project ID CUP-23-002) to allow for an electronic message board sign on one of the tenant panels to be utilized as a digital gasoline and diesel price sign, necessitating the above mentioned Variance from the maximum allowed tenant panel size of 150 square feet for an individual tenant; and

WHEREAS, Section 10-9.102 of the Modesto Municipal Code authorize the Board of Zoning Adjustment to grant variances subject to findings specified in Section 10-9.602; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on August 24, 2023 in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed variance is exempt from CEQA, pursuant to Section 15311(a) of the CEQA Guidelines, which exempts on-premise signs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that based upon such evidence it finds and determines that:

1. There are special circumstances or conditions applicable to the property or buildings in question which do not exist for other property or buildings in the same zone and immediate vicinity:

While the site is proximate to the SR 99 and Crows Landing interchange, it is visually restricted, based on its elevation, and the elevation of SR 99 as it traverses the area. For southbound SR 99 traffic, the proposed sign can be seen relatively well. But, for northbound traffic, visibility is much more limited.

The increase in size of the proposed gas station tenant panel on the top of the sign is to allow for both the tenant identification (about 140 square feet) and an electronic gas price sign to display gas prices (about 100 square feet), and five-foot increase in height, is to allow for earlier recognition for drivers and therefore give more time to make a decision to exit the freeway. These circumstances apply specifically to this property based on its location and proximity to the interchange, and do not exist for other properties or buildings in the same zone and immediate vicinity.

2. The special circumstances or conditions are such that strict application of the provisions of this Chapter would deprive the applicant of practical use of the property or buildings:

Based on the location of the property, the curvature and elevations of the highway, and the need for enhanced visibility and early sign recognition for northbound traffic, the strict application of the sign standards would make it difficult to attract tenants, and result in numerous members of the travelling public missing the center by a late recognition of the sign and project tenants. This deprives the applicant of practical use of the property without the ability to adequately advertise the businesses thereon.

3. Granting the variance will be consistent with the intent and purpose of this Chapter and will not be detrimental to the neighborhood or public welfare:

The area of the Modesto Tallow site is generally industrial and commercial. The sign will be oriented to traffic on Highway 99. Residences in the neighborhood are far from the sign and would not be impacted by light or glare from the sign. The public welfare will be served by providing an opportunity to serve the travelling public and

residents of the area. As such, the proposed modifications to the sign will not be detrimental to the neighborhood or the public welfare.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that it grants to Modesto Holding Company a variance from the provisions of Section (s) Section(s) 10-6.107 Table 6.1-2, 10-6.108(h)(5) and 10-108(k)(2)(iii) of the Modesto Municipal Code to permit a tenant panel in excess of 150 square feet in area, in addition to a digital fuel price sign at a height higher than 14-feet, at the previously-approved freeway oriented freestanding shopping center sign, subject to the following conditions:

1. The sign shall be constructed in accordance with the plans labeled "The Plaza, DF Illuminated Multi-Tenant High Rise Sign Program Project" as stamped approved by the Board of Zoning Adjustment on August 24, 2023.
2. The electronic message board sign shall not be installed on the sign unless the Board of Zoning Adjustment approves the associated Conditional Use Permit (Project ID CUP-23-002) prior to construction.
3. The sign shall not be constructed until and unless a development plan for the first business for the future shopping center is approved by the Director of Community and Economic Development or designee and a building permit for the first business has been issued by the City's Building Safety Division.
4. The area of the sign shall be based on actual construction on the site and be designed in accordance with Section 10-6.107 Table 6.1-2 of the Modesto Municipal Code for Freestanding Freeway-Oriented Shopping Center Signs and Section 10-6.108(h)(5) of the MMC for sign area, as required by the MMC for the acreage of the future shopping center:
 - a. All tenant panels to be no more than 150 square feet in area, except for the one enlarged panel with accompanying electronic message board for a fuel price sign, in combination totaling 240 square feet as provided by this Variance.
 - b. Total sign area including the enlarged tenant panel provided by this Variance shall be no larger than 790 square feet in area, plus an additional 100 square feet for the shopping center name, for a shopping center of 20 acres or more.
 - c. Tenant panels of the sign shall not be used for any other purpose than the identification of a business within the shopping center.
5. No portion of the freeway-oriented sign shall encroach into the public right of way without the issuance of a special encroachment permit from the City in accordance with Section 10-6.106(e)(2) of the Modesto Municipal Code.

6. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the City Engineer or designee.
7. The property owner and developer shall, at their sole expense, defend, with counsel selected by the City, 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.

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 August 24, 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.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on August 24, 2023, by Board Member Goriel, who moved its adoption, which motion was seconded by Board Member Desai and carried by the following vote:

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

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

Jessica Hill, Secretary