

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2023-07

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO MODESTO HOLDING COMPANY FOR AN ELECTRONIC MESSAGE BOARD SIGN TO BE LOCATED ON A PREVIOUSLY-APPROVED FREEWAY-ORIENTED FREESTANDING SHOPPING CENTER SIGN, 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, an application for a Conditional Use Permit for an electronic message board component to be located on the previously-approved sign was filed by Modesto Holding Company on July 14, 2023; and

WHEREAS, the developer has also under separate application requested a Variance from the total allowed 700 square foot sign area (Project ID VAR-23-003), to allow for larger tenant panels on the previously-approved sign for a total sign area of 786.2 square feet, including a larger tenant panel for which the electronic message board is to be incorporated into, to allow for a digital gasoline and diesel price sign for a future gas station to be developed at the site; and

WHEREAS, Section 10-9.102 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 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 Board of Zoning adjustment has received and reviewed Notice of Exemption EA/C&ED No. 2023-016, which states that this matter is exempt from further review under the California Environmental Quality Act (CEQA) under Section 15311(a) of the CEQA Guidelines, which exempts on-premise signs.

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 Code allows for electronic message board components to freestanding shopping center signs for shopping centers five (5) acres or larger, where located on an arterial street or expressway, with a conditional use permit.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because the use for which the sign would identify is consistent with the Mixed Use (MU) land use designation, which allows for commercial 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 the electronic sign will be required to meet all applicable Zoning and Building Codes.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because the electronic sign will be required to operate in accordance with the City's Zoning Code which regulates electronic sign placement and sets limitations for message movement, transition, duration and brightness.
5. The proposed project is exempt from CEQA under Section 15311(a) of the CEQA Guidelines which exempts on-premise signs that are consistent with the Modesto Urban Area General Plan.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for the installation of an electronic message board sign into the previously-approved freeway-oriented shopping center sign be granted subject to the following conditions:

1. The sign shall be constructed in accordance with the concept plans labeled "The Plaza, DF Illuminated Multi-Tenant High Rise Sign Program Project" as amended in red and stamped approved by the Board of Zoning Adjustment on August 24, 2023.
2. The conditional use permit for the placement and sizing of the electronic message board is contingent upon approval of a Variance for tenant panel sizing by the Board of Zoning Adjustment.
3. The electronic sign shall be located and operated in conformance to all requirements and limitations outlined in Section 10-6.108(f)(1)(ii) of the Modesto Municipal Code.
4. No portion of the freestanding sign and its electronic message board component 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.
5. At no time shall the electronic message board display video as defined by Section 10-6.102(ccc), Video Display Sign.
6. Tenant panels of the freestanding sign including the electronic message board component shall not be used for any other purpose than the identification of a business within the shopping center.
7. The freestanding sign and its electronic message board component 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.

8. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the City Engineer or designee.
9. 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.

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 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