

**BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2024-02**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ABDO ALMOLAIKI FOR THE DEVELOPMENT OF A PARKING LOT IN THE R-2 ZONE TO SERVE A NEW FUEL STATION TO BE DEVELOPED IN AN ADJACENT COMMERCIAL ZONE, AND FOR THE REDUCTION OF LANDSCAPE REQUIREMENTS ALONG THE RESIDENTIAL ZONE, PROPERTY LOCATED AT 1414 TUOLUMNE BOULEVARD (ABDO ALMOLAIKI)**

WHEREAS, an application for a Conditional Use Permit to allow for the development of a parking lot on a Medium-Density Residential zoned property located at 1414 Tuolumne Boulevard to serve a non-residential use in an adjacent commercial zone, was filed by Abdo Almolaiki on November 17, 2023; and

WHEREAS, with the Conditional Use Permit, the applicant also requests a reduction in width of the setback requirements for a parking lot adjacent to a residential zone, from ten feet in width to a minimum of six feet in width; 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 June 27, 2024, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this project is Categorically Exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines, which exempts projects characterized as in-fill development, and that this project meets the conditions described within Section 15332, 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) as Parking Lots are allowed in the R-2 residential zone per Title 10, Table 3.1-1 of the MMC, upon securing 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 General Plan land use designation for the property is Residential, which allows for uses permitted in the R-1, R-2, and R-3 Residential Zones. Since parking lots adjacent to non-residential developments are allowed in the Medium Density Residential (R-2) Zone with a Conditional Use Permit, the application is therefore consistent with the General Plan.
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 this parking lot will be required to meet all applicable Zoning, Building and Fire Code Standards, and Stanislaus County Health and Safety Codes.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because screen landscaping and an 8-foot-high masonry block wall is required along the eastern property line, and parking lot lighting is required to be shielded to minimize glare upon adjacent residences.
5. The proposed project is exempt from CEQA under Section 15332 of the CEQA Guidelines, which exempts the projects characterized as in-fill development, provided that the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, and; the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, and; the project site.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for the parking lot in the portions of an R-2, Medium-Density Residential Zone on 1414 Tuolumne Boulevard be granted subject to the following conditions:

PLANNING

1. Prior to the issuance of a building permit, all development shall conform to the development plan titled "New Building Gas/Market 1414 Tuolumne Blvd. Modesto, CA 95351", stamped approved by the Board of Zoning Adjustment on June 27, 2024.
2. Prior to issuance of a building permit, any variation from the approved site plan on file with the City must be reviewed and approved by the Director of Community and Economic Development or designee.
3. Prior to issuance of any building permit for any parcel on the site, applicant shall demonstrate the merger of said parcels to the satisfaction of the Director of Community and Economic Development or designee with either a Parcel Map or Lot Line Adjustment.
4. 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.
5. All activity on site shall comply with the City's Noise Ordinance (Modesto Municipal Code Title 4 and Chapter 9).
6. Prior to occupancy of the fueling station, striping of parking stalls, aisles, and driveways shall conform to the provisions of MMC Section 10-2.2004, Parking Lot Design.
7. Parking lot shade trees shall be provided in all new parking areas to meet current parking lot shading requirements (1 tree per 8 stalls, 50% coverage within 10 years).
8. Screen landscaping shall be provided along the eastern side of the site abutting the adjacent residential uses to the east to the satisfaction of the Director of Community and Economic Development or designee.
9. Prior to occupancy of the fueling station, fences and/or walls shall be constructed as follows, to the satisfaction to the Director of Community and Economic Development or designee:
  - a. An 8-foot-high solid decorative masonry wall with cap treatment along the eastern property line, as shown on the approved site plan.
10. Prior to the issuance of a building permit, a wall plan shall be submitted for review and approval by the Director of Community and Economic Development. The plans shall indicate materials, colors, and height of proposed and existing wall/fences and shall include a cross-section of walls/fences indicating adjacent grades. Walls shall be designed as an

integral part of the architecture for the development and shall be constructed of concrete, brick, split-face, or slump block.

11. Prior to issuance of a building permit, a photometric lighting plan shall be submitted for review and approval by the Community and Economic Development Director. Fixtures should be of a type or adequately shielded so as to prevent glare from normal viewing angles. Said plans shall include specifications of the proposed lighting fixtures and demonstrate the adequate shielding of lighting fixtures to minimize glare or light spillage upon neighboring residents east and south of the project site. The height of the lighting fixtures in the area between the property line and the fueling station building shall not exceed 15 feet above grade.
12. All signs including monument signs shall comply with the sign requirements of the Commercial Zones except on the portion zoned for Medium-Density Residential. Prior to issuance of a sign permit, individual sign plans for the project shall be submitted for separate review and approval prior to installation.
13. Applicant/Operator shall not conduct any operation, including replenishing the underground fuel storage tanks, within the adjacent public alley.
14. No fuel or delivery trucks with a bumper-to-bumper length of more than 45.5' or having a wheelbase exceeding 40' shall be allowed on the site.

#### TRANSPORTATION ENGINEERING AND DESIGN

15. Prior to issuance of a building permit, dedication shall be required as dictated on the approved site plan.
16. To facilitate the circulation of the fuel truck, the alley shall be improved to its full width, from the alley entrance on Sutter Avenue to the easternly edge of the project site, in accordance to City Standards.

#### LAND DEVELOPMENT ENGINEERING

17. 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 streetlights. 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.
18. The proposed driveway width on Tuolumne Blvd. and Sutter Ave. shall be designed and constructed per City of Modesto Standards for a commercial driveway, see (Chapter 10, Table 10.1).

#### STORM WATER QUALITY

19. 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.
20. 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.
21. 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.
22. 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 and floor of enclosures shall be graded to drain into adjacent landscape areas.
23. 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

### Irrigation

24. MID owns an existing twenty-four (24) inch Domestic Water pipeline that lies within Sutter Ave. The pipeline is mortar-lined steel and must be protected in place.
  - a. No construction may occur within ten (10) feet of the existing water line without written approval from MID’s Water Operations personnel.
  - b. Should the proposed plans require construction within 10’ of the existing domestic water pipeline, MID’s Water Operations Department must be notified a minimum 48 hours before construction. An inspector must be on-site during the construction.

- c. The proposed plans must be submitted to MID's Civil Engineering Department for review and approval.

### Electrical

25. High voltage is present within and adjacent to the project area. This includes 69,000 volts overhead transmission, 12,000 volts overhead, as well as overhead 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.
26. 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.
27. 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.
28. 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.
29. Prior to any construction a full set of construction plans must be submitted to Electrical Engineering Design Group.

### FIRE

30. Show location of two or more 2A20BC fire extinguishers place such that no location in the building or dispensing area is more than 75' from one. Top of fire extinguisher to be no higher than 4' AFF.
31. Provide detail about Veederroot, underground fuel tanks, fuel lines, and dispensing equipment per CFC Chapter 23.
32. Show an address on the building meeting the requirements of CFC 505.1.

33. Show location of Knox key box to the right of the front entry approximately 7' AFF.

PARKS, RECREATION & NEIGHBORHOODS

34. 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.
35. Applicant shall provide a minimum four-foot (4') side landscape setback.
36. 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 Sutter Avenue and Tuolumne Blvd.
37. Applicant shall install parking lot shade trees per MMC requirements; one (1) shade tree for every eight (8) parking spaces, continuous and intermitted stall locations, within seven feet (7') of stalls and achieve fifty percent (50%) surface shade requirements.
38. Applicant shall install the required three foot (3') high screening for vehicle headlights in the parking areas and fuel station areas along Sutter Avenue.
39. Applicant shall provide signage with appropriate landscaping for Clear Vision Triangles at driveway entrances along Sutter 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.
40. Applicant shall install climbing vines on all walls, in a landscape planter, around the trash enclosures and masonry walls visible to Sutter Avenue and Tuolumne Blvd.
41. 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.
42. Applicant shall install bicycle parking racks as part of the project development per MMC and Green Building Standards Code.

BUILDING SAFETY

43. All aspects of the project must comply with current City of Modesto Standards and current California Building, Electrical, Mechanical, Plumbing, Energy and Green Codes adopted by the City of Modesto. (2022 California Building Code Cycle).
44. Fire sprinklers and an adequate water supply will be required. Fire sprinkler plans will be a separate submittal made directly to the Fire Department after the issuance of building permits.

SOLID WASTE

45. The trash enclosure shall be large enough to house three containers for Garbage, Organics, and Recycling (MMC 5-5.109 and MMC 5-5.113).
  - a. Prior to issuance of a building permit, applicant shall clarify the size of the trash enclosure. Enclosure must be large enough to accommodate three containers.
46. Applicant shall 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)).
  - a. Plans shall indicate the circulation plan for this site. Show 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.
47. Solid Waste enclosures shall be located for convenient tenant access. Enclosures shall not be blocked with parking spaces or interfere with on-site circulation.
48. 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 should be compatible with the buildings.
49. 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)).

50. A stress pad shall be installed in front of the solid waste enclosure area. Improvement plans shall demonstrate the following below guideline:
  - a. The pad shall be engineered to withstand up to 20,000 pounds of direct force.
  - b. The solid waste area pad and apron shall slope 1/8 inch per foot to facilitate proper drainage.
  - c. The apron surface shall be the same elevation as the pad threshold and the surrounding surfaces.
51. Enclosure must be connected to a sanitary sewer (MMC 5-5.103 (yy)).
52. 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).
53. Containers shall be stored inside of an enclosure or solid waste room at all times except on collection day (MMC 5-5.120 (c)).
54. Every producer of solid waste must segregate garbage, recycling, and organics (MMC 5-5.105).

#### GENERAL

55. 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.
56. All department Conditions of Approval for the project shall be included with parking lot plans and shall be continuously maintained on-site during project construction to the satisfaction of the Chief Building Official.
57. All screen landscaping, landscaping (i.e.: trees, shrubs, climbing vines, etc.), fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
58. 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, building permit, and plan check fees.

59. 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.
60. 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.

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 June 27, 2024, 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 the 27<sup>th</sup> day of June 2024, by Board Member Shanks, who moved its adoption, which motion was seconded by Desai was upon roll call carried by the following vote:

Ayes: Blom, Desai, Riddle, Shanks

Noes: Goriel

Absent: Niskanen, Vohra

Recused: None

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

Original, signed copy on file in CED  
Jessica Hill, Secretary