

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2013-01

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO HOUSING
AUTHORITY OF THE COUNTY OF STANISLAUS FOR AN 11-UNIT LOW INCOME
SENIOR HOUSING DEVELOPMENT AT 412 & 416 DOWNEY AVENUE

WHEREAS, an application for a conditional use permit for a 7,700-square-foot, 11-unit low income senior housing complex at 412 & 416 Downey Avenue, was filed by Stanislaus County Housing Authority on October 31, 2012; and

WHEREAS, Sections 10-1.302(a) and 10-9.703 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 January 24, 2013, in Chambers, Tenth Street Place, 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 2012-27, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2007072023) 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 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 multi-family residential uses in commercial zones with approval of a conditional use permit, and the project meets all standards and requirements of the R-3, Medium-High Density zone as required by the Zoning Regulations.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because it is consistent with the Redevelopment Planning District designation.
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 facility 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 the project is consistent with uses allowed in the redevelopment planning district which includes single level and vertical mixed-use development (i.e.: multi-family developments, professional offices, and neighborhood retail).

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.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for Housing Authority of the County of Stanislaus at 412 & 416 Downey Avenue be granted subject to the following conditions:

PLANNING

1. Prior to the issuance of a building permit, all development shall conform to the plot plan and elevations titled "SCHA – Schematic Site Plan – 11 Unit Senior Housing - 412 & 416 Downey Ave., Modesto, CA", stamped approved by the Board of Zoning Adjustment on January 24, 2013.
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 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.
4. Prior to occupancy of any structure, striping of parking stalls, aisles and driveways shall conform to the provisions of MMC Section 10-2.2004, Parking Lot Design.
5. Parking stalls adjacent to a landscape planter or walkway should have a dimension of 9 ft. by 15.5 ft. with a 2.5 ft. overhang. Compact stalls should be 7.5 ft. by 12.5 ft. with a 2.5 ft. overhang. All required overhang should be added to the required landscape or walkway. The use of wheel stops is discouraged. Parking stalls should be redesigned accordingly.

6. 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).
7. Prior to occupancy of any structure, fences and/or walls shall be constructed as follows, to the satisfaction to the Director of Community and Economic Development:
 - A 7-foot high decorative masonry wall with cap treatment along the east and west property lines.
8. Prior to the issuance of a building permit, the developer shall submit a lighting plan that includes the location and design of proposed lighting fixtures for review and approval by the Director of Community and Economic Development.
9. 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 to the satisfaction of the Director of Community and Economic Development.
10. Prior to the issuance of a building permit, the applicant shall submit a cross-section drawing, showing how all rooftop equipment is to be screened from view (including dimensions, materials, colors, etc.) to the satisfaction of the Director of Community and Economic Development. Roof-mounted equipment, including but not limited to air conditioners, fans, vents, antennas, and dishes should be set back from the roof edge and placed behind a parapet wall or in an enclosure, so they are not visible to motorists or pedestrians. Screening for equipment should be integrated into the building and roof design by the use of compatible materials, colors and forms. Wood lattice and fence-like coverings are not allowed for screening.
11. Prior to Certificate of Occupancy of any structure, all ground mounted utility structures such as transformers and HVAC equipment shall be located out of view from a public street to the satisfaction of the Director of Community and Economic Development. Equipment shall be placed underground or adequately screened through the use of landscaping or masonry walls.
12. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.
13. Existing overhead and underground electric facilities and irrigation pipelines shall be removed, protected, or relocated as required by the Modesto Irrigation District and the Engineering and Transportation Director. Easements for utility lines to remain shall be dedicated.
14. Prior to the issuance of a building permit, a wall plan shall be submitted by the applicant and approved 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.

15. 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.
16. 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.
17. Prior to the issuance of a building permit, trash enclosures shall be designed using building materials, colors and finishes which are consistent or compatible with those used in the major building of the development, as approved by the Community and Economic Development Director.
18. Prior to plan approval, all refuse and recyclable material bin enclosures should be screened with landscaping on all sides, with the exception of the gate area. All sides of the enclosure, with the exception of the gate area, should be surrounded by a minimum 18" wide planter area for the purpose of providing landscape material to the satisfaction of the Community and Economic Development Director.
19. All existing street and property monuments within or abutting this project site shall be preserved. If, during construction of on-site or off-site improvements, monuments are damaged or destroyed, the applicant/developer shall retain a qualified licensed land surveyor or civil engineer to reset those monuments per City Standards and file the necessary information with the County Clerk-Recorder's Office as required by AB1414.
20. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a registered civil engineer and approved by the Engineering and Transportation Director. Improvements shall be constructed in accordance with the approved plans.
21. Trash bins shall be kept in enclosures in accordance with the approved plan, and enclosures shall be constructed of building materials consistent with those used in the major buildings as approved by the Community and Economic Development Department Director.
22. All signs shall comply with the sign requirements of the R-3 Zone.
23. Prior to issuance of a sign permit, individual sign plans for the project shall be submitted for separate review and approval prior to installation.

LAND DEVELOPMENT ENGINEERING

24. Any public improvements that are missing, damaged or not to current City standards shall be designed per City standards in accordance with City Code (Article 7-1.701), standards and Specifications, 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 an Encroachment permit.
25. All on-site storm water generated from this development shall be kept on-site through an on-site facility that is designed per City Standards. Please refer to City of Modesto Standards Chapter 4 for details.

STORM WATER QUALITY

26. Prior to the issuance of a Grading or Building Permit, Developer shall prepare and submit a Water Pollution Control Plan (WPCP) or Local SWPPP to Land Development Engineering, Stormwater for review. The submittal shall include a description of all erosion, sediment, and pollution control Best Management Practices to be used at the construction site to prevent sediment and other sources of pollution from entering the City storm drain system as well as a site plan showing their placement.
27. Prior to the issuance of a Grading or Building Permit, Developer shall provide plans for trash enclosures to be sufficiently elevated to prevent stormwater run-on from parking areas and alley. Floor of enclosures shall be graded to drain into the adjacent landscape areas directly north of enclosures.
28. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan to retain and infiltrate stormwater runoff on site by incorporating pervious landscape features into the project design. Roof and parking area drainage shall be discharged to on-site landscape areas for infiltration, wherever possible.
29. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grassed landscape swale) to remove pollutants from the first 1/2" stormwater run-off from parking area.
30. Prior to the issuance of a Grading or Building Permit, property owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement (for grassed landscape swale) to Land Development Engineering, Stormwater for recording.

PARKS, RECREATION & NEIGHBORHOODS

31. If project is approved, applicant shall submit Landscape and Irrigation plans for review and approval by the Parks, Recreation and Neighborhoods Department Director or designee. Landscape and Irrigation plans shall meet current State of

California water requirements, MMC requirements and City of Modesto Standards at time of submittal.

32. Remove turf strips along Downey Avenue and replace with sidewalk; tree wells to have City-approved tree grates.
33. Project shall include specifying that climbing vines be planted next to the CMU block walls on the east and west property lines as a deterrent to graffiti.
34. Applicant shall provide a landscape and irrigation design that does not allow storm water or irrigation water runoff on to hardscape, all water shall be contained on site.
35. The proposed location, design, size and concrete pad for the trash enclosure look to be in conformance with City Standards for Garbage Enclosures & Containers. Actual design must meet standards for enclosures. CWM forms will also need to be submitted prior to pulling a permit.

FIRE

36. Fire Sprinklers and alarms shall be installed as required by California Building and Fire Codes.
37. Please modify Fire Department Access from James Ave and from Burney Ave to the alley serving this project to meet the minimum apparatus turning radii of 25' inside and 45' outside.
38. The alley serving this project shall be designated as a fire lane that will provide 20' wide clear access and shall be painted with approved curb markings and/or signage.

BUILDING SAFETY

39. All aspects of this project to comply with current City of Modesto Standards and also current California Building, Electrical, Mechanical, Plumbing, Energy, Green codes adopted by the City of Modesto.
40. A rated wall and parapet will be required at East and West property lines.
41. All ground floor units will have to be adaptable.

GENERAL

42. All department Conditions of Approval for the project shall be included with building plans and shall be continuously maintained on-site during project construction to the satisfaction of the Chief Building Official.
43. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
44. Prior to Certificate of Occupancy for any structure, cable television service shall be stubbed into all units.

45. 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.
46. 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.
47. Prior to issuance of a building permit, the applicant shall record a covenant restricting the project to senior housing in accordance with the City of Modesto Neighborhood Stabilization Program 2 (NSP2), and the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing, and to the satisfaction of the City Attorney or designee.
48. 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.

DEVELOPMENT SCHEDULE

49. Project approval shall become null and void two (2) years following the effective date of approval, unless a building permit is issued and construction is commenced, and diligently pursued toward completion.

In addition, the following recommended Conditions of Approval are mitigation measures from the Modesto Urban Area General Plan Master Environmental Impact Report that should be applied to the project:

50. If archaeological resources are discovered at any time during construction, all activity shall cease until the site is surveyed by a qualified archaeologist. The survey shall include mitigation measures, which shall be implemented before construction resumes. The survey shall follow the criteria presented in Appendix K of the State CEQA Guidelines.
51. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.
52. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.

53. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
54. When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
55. All operations shall limit 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.)
56. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
57. Within urban areas, track-out shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.
58. The City's noise ordinance (Modesto Municipal Code Section 4-9.101) prohibits the "loud and raucous discharge into the open air of the steam of any steam equipment or exhaust from any stationary internal-combustion engine."

The noise ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

- a. A hammer, or any other device or implement used to pound or strike an object.
- b. An impact wrench, or other tool or equipment powered by compressed air.
- c. A hand-powered saw.
- d. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.
- e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.
- f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling

and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.

- g. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.
- h. Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

- 59. Construction equipment and vehicles shall be equipped with properly operating mufflers according to the manufacturer's recommendations. Air compressors and pneumatic equipment shall be equipped with mufflers and impact tools shall be equipped with shrouds or shields.
- 60. Construction activities shall comply with the requirements of the City's Storm Water 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.

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 January 24, 2013, 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 January 24, 2013, by Hank Pollard, who moved its adoption, which motion was seconded by John Bergman, and carried by the following vote:

Ayes:	Bergman, Brandvold, French, Grover, Matas, Pollard, Swehla
Noes:	None
Absent:	None
Recused:	None

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

Original, signed copy on file in CEDD

Patrick Kelly, Secretary