

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2021-01

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO MODESTO HOLDING COMPANY FOR A NEW FREEWAY-ORIENTED SHOPPING CENTER SIGN OF 90 FEET IN HEIGHT LOCATED ON ZEFF ROAD NORTHWEST OF PECOS AVENUE

WHEREAS, an application for a Conditional Use Permit for a freeway-oriented shopping center sign to be constructed at 90 feet in height located on the west side of Zeff Road 600 feet north of Pecos Avenue for a future 20 to 30-acre shopping center on Zeff Road west of Pecos Avenue, was filed by Modesto Holding Company on January 8, 2021; and

WHEREAS, Section 10-9.102 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 February 25, 2021, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this matter is exempt 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) which allows freeway-oriented signs for shopping centers over five acres within 600 feet of Freeway 99.
2. Video evidence presented by the applicant demonstrates that the requested height of 90 feet in sign height is necessary for adequate visibility from the lanes of travel of the State Highway 99.
3. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because the proposed conditional use and the conditions under which it will operate is consistent with the General Plan, by furthering the economic development goals of the General Plan.
4. 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 sign will be required to be constructed and operated in accordance with the City's sign regulations and City Standards.
5. The proposed conditions of approval will ensure compatibility with the surrounding uses because the conditions will ensure the development of

the future shopping center either prior to or concurrent to the construction of the freeway-oriented sign.

6. The proposed project is exempt from CEQA under Sections 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 to allow a freeway-oriented 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 in height be granted subject to the following conditions:

1. The sign shall be constructed in accordance to the plans labeled "Conceptual Drawings for The Plaza Multi-Tenant High-Rise Project" as amended in red and stamped approved by the Board of Zoning Adjustment on February 25, 2021.
2. 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.
3. The area of the sign shall be based on actual construction on the site and be designed in accordance to 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. A total sign area of no greater than 300 square feet and an additional 100 square feet for the shopping center name, and no tenant panel greater than 150 square feet in size, for a shopping center of five acres up to 20 acres;
  - b. A total sign area of no greater than 700 square feet and an additional 100 square feet for the shopping center name, and no tenant panel greater than 150 square feet in area, for a shopping center of 20 acres or more.
  - c. Should the sign advertise only a single tenant or only the shopping center name, the maximum sign area shall be 150 square feet in accordance to MMC Section 10-6.108(h)(5)(ii).
  - d. Tenant panels of the sign shall not be used for any other purpose than the identification of a business within the shopping center.
4. 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 to Section 10-6.106(e)(2) of the Modesto Municipal Code.

5. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the City Engineer or designee.
6. 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 February 25, 2021, 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 25<sup>th</sup> day of February 2021, by Board Member Roddick, who moved its adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

Ayes:	Desai, Goriel, Roddick, Rodriguez, Vohra
Noes:	Yare
Absent:	Blom
Recused:	None

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

Original, signed copy on file in CEDD  
Steve Mitchell, Secretary