

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2016-05

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE EXPANSION OF A SKILLED NURSING FACILITY LOCATED AT 515 E. ORANGEBURG AVENUE (DR. GURPREET SINGH)

WHEREAS, an application for a Conditional Use Permit for the expansion of a skilled nursing facility at 515 E. Orangeburg Avenue, Modesto, CA, was filed by Edmond Jacobs, AIA, on behalf of Dr. Gurpreet Singh on October 2, 2015; 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 April 28, 2016, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed project is categorically exempt from environmental review in accordance with Section 15332 of the California Environmental Quality Act Guidelines because the project is an in-fill development due that is consistent with the general plan and zoning designations, is within the city limits on a site that is less than five acres and surrounded by urban uses, has no value as habitat for endangered, rare or threatened species, would not result in any significant impacts, and can be served by all required utilities and public services;

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines that as follows:

1. The proposed conditional use permit, with its conditions satisfied, is consistent with the objectives and requirements of Title 10 (Zoning Regulations) because a skilled nursing facility is allowed within a residential zone with a conditional use permit approval.
2. The proposed conditional use, and the conditions under which it will operate is consistent with the General Plan because the site location is designated in the General Plan as Mixed Use and this designation allows professional office, commercial and residential uses to be located within it.
3. The proposed conditions of approval will ensure compatibility with the surrounding uses because the proposed use is a low-impact use and the conditions as applied will minimize any potential impacts to neighboring residences.
4. The proposed project is categorically exempt from under Section 15332 of the CEQA Guidelines because the project is in-fill development that is consistent with the general plan and zoning designations, is within the city limits on a site that is less than five acres and surrounded by urban uses, has no value as habitat for endangered, rare or threatened species, would not result in any significant impacts, and can be served by all required utilities and public services

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 515 E. Orangeburg Avenue be granted subject to the following conditions:

1. Prior to the issuance of any city permit, all development shall conform to the development plan and building elevations titled "Avalon Care Center SNF" and stamped approved by the Board of Zoning Adjustment on April 28, 2016.
2. Prior to issuance of any city 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. Storm drainage is required to be managed and retained on-site per City standards. Such a plan must be approved by the Land Development Engineering Division.
5. 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.
6. Prior to the issuance of a Grading, Demolition, or Building Permit, Property Owner shall obtain coverage for project under the State Water Resources Control Board (SWRCB) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, as amended by 2010-0014-DWQ and 2012-0006-DWQ.
7. The General Construction Permit requires the Property Owner to develop a Stormwater Pollution Prevention Plan (SWPPP) for the project. Prior to issuance of a Grading, Demolition, or Building Permit, provide one copy of SWPPP to Land Development Engineering, Stormwater.
8. 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. Floor of enclosures shall be graded to drain into adjacent landscape areas.
9. 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 and infiltrate the first 0.5" of stormwater runoff on site, and incorporate pervious landscape features into the project design wherever possible.

10. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grass swale, vegetative strip, or other approved proprietary device) to remove pollutants from the first 0.5" of stormwater run-off from site.
11. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording.
12. A 5-foot dedication to the City of Modesto is required for Coolidge Avenue Right-of-way.
13. Prior to occupancy, the developer shall construct curb, gutter and sidewalk improvements on the frontage of the adjacent residential parcel (APN 031-006-060) located in between the proposed skilled nursing facility addition (currently APN 031-060-021) and its off-site parking lot (APN 031-006-059).
14. All public improvements are required to be constructed to current City standards. Such improvements to include but not limited to curb and gutter, sidewalk, drive approach, ADA access ramps, fire hydrants and street lights. All public improvement plans shall be designed by a Registered Engineer and reviewed and approved by the City Engineer prior to issuance of an encroachment permit.
15. Prior to occupancy of the new portion of the structure, striping of parking stalls, aisles and driveways shall conform to the provisions of MMC Section 10-2.2004, Parking Lot Design.
16. Prior to occupancy of the new portion of the structure, an 8 foot-high masonry wall with decorative masonry pilasters and a cap treatment shall be constructed along the east and west property lines of APN 031-006-057, APN 031-006-021 and APN 031-006-059, where they abut residentially developed property.
17. Prior to occupancy of the new portion of the structure, the requirement for a wall for the portion of the project site which is adjacent to APN 031-006-060 may be waived by the Community and Economic Development Director or designee if the developer provides evidence to the satisfaction of the Community and Economic Development Director that the developer has acquired APN 031-006-060.
18. Prior to occupancy of the new portion of the structure, screen landscaping that minimizes the view from the adjacent residential properties to the commercial facility shall be installed to separate and buffer the skilled nursing facility from the adjacent residential uses.
19. Prior to occupancy of the new portion of the structure, walls shall be treated with a graffiti-proof coating along the rear property line in the alley way to the satisfaction of the Director of Community and Economic

- Development or Designee. Construction drawings shall note the type of graffiti treatment used.
20. Prior to issuance of any city permit, a landscape and irrigation plan shall be approved by the Community and Economic Development Director or designee. Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.
  21. Developer shall meet current City of Modesto and State of California irrigation requirements for commercial buildings.
  22. Developer shall meet current City of Modesto and State of California landscape water use and requirements.
  23. Developer shall provide for parking lot shade trees, per MMC.
  24. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
  25. Developer shall provide trash enclosures that meet City Standards
  26. Prior to issuance of any city permit, trash enclosures shall be designed using building materials, colors and finishes which are consistent or compatible with those used in the major buildings of the development, as approved by the Community and Economic Development Director.
  27. All signs shall comply with the sign requirements of the R-1 Zone. Prior to issuance of a sign permit, individual sign plans for the project shall be submitted for separate review and approval prior to installation.
  28. All department Conditions of Approval for the project shall be included with building plans and shall be continuously maintained on-site during project construction.
  29. Prior to issuance of any city permit, the two parcels (APN 031-006-057 and APN 031-006-021) must be merged so the proposed structure can be built in accordance with the City of Modesto Municipal Code.
  30. Prior to issuance of any city permit, a deed restriction, created in a form to be approved by Community and Economic Development Director or designee, shall be recorded that prohibits APN 031-006-059 from being sold off separately from the combined care center parcel (APN 031-006-057 and APN 031-006-021). This condition may be waived by the Community and Economic Development Director or designee if the developer provides evidence to the satisfaction of the Community and Economic Development Director that the developer has acquired APN 031-006-060 and merges all four parcels prior to the issuance of a building permit.

31. 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.
32. The Capital Facilities Fees payable at the time of the issuance of a building permit for any construction in this development shall be based on the rates in effect at time of issuance of the building permit.

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:

33. 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.
34. 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. 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.
35. 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.
36. 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.
37. Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.
38. Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
39. Suspend excavation and grading activity when winds exceed 20 mph.

40. Limit the area subject to excavation, grading and other construction activity at any one time.
41. 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.
42. If archaeological resources are discovered at any time during construction, all activity shall cease until a qualified archaeologist surveys the site. The survey shall include mitigation measures, which shall be implemented before construction resumes. The survey shall follow the criteria as presented in The City of Modesto General Plan MEIR Appendix K.
43. 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 April 28, 2016, 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 April 28, 2016, by Hank Pollard, who moved its adoption, which motion was seconded by Amin Vohra, and carried by the following vote:

Ayes:	Pollard, Rodriguez, Selover, Vohra, Matas
Noes:	None
Absent:	Morris
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