

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2013-08

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO CHARLES EVINS FOR A FULL SERVICE FUNERAL HOME WITH RELATED SERVICES INCLUDING CREMATION SERVICES LOCATED IN EXISTING CHURCH BUILDINGS AT 1101, 1109 AND 1113 5TH STREET

WHEREAS, on October 25, 1973 by Resolution No. 497 the Board of Zoning Adjustment granted a Conditional Use Permit and Variance to allow the continued use of a building at the westerly corner of 5th and K Streets as a church without off-street parking; and

WHEREAS, on July 27, 1978 by Resolution No. 812 the Board of Zoning Adjustment granted a Conditional Use Permit and Variance to allow the conversion of a commercial building located at 1113 5th Street as a church without off-street parking; and

WHEREAS, an application for a Conditional Use Permit for a full service funeral home with related services including cremation services located in existing church buildings located at 1101, 1109 and 1113 5th Street in the General Commercial (C-2) Zone, was filed by Charles Evins on November 14, 2013; 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 December 19, 2013, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the project is Categorically Exempt from CEQA under Section 15332 of the CEQA Guidelines, which exempts in-fill development where the site is within city limits, is less than five acres in size, is substantially surrounded by urban uses, has no value as a habitat for threatened species, is adequately serviced by utilities and public services, and is consistent with applicable General Plan land use designations and Zoning regulations.

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 funeral homes with cremation facilities within the General Commercial (C-2) Zone upon attaining a Conditional Use Permit from the Board.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because the funeral home and crematorium facility are located in an area designated as part of the Redevelopment Planning District (RPD) which allows for commercial and institutional uses.

2. 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 while no new development or major alterations are proposed for the existing church buildings, the developer must as a condition of approval ensure that all applicable Building Codes and Fire Codes are adhered to prior to establishment of the funeral home and cremation facility.
3. The proposed conditions of approval will ensure compatibility with the surrounding uses because the funeral home and cremation facility will be operated within existing church buildings as an additional use to church operations.
5. The project is Categorical Exempt from CEQA under Section 15332 of the CEQA Guidelines, which exempts in-fill development where the site is within city limits, is less than five acres in size, is substantially surrounded by urban uses, has no value as a habitat for threatened species, is adequately serviced by utilities and public services, and is consistent with applicable General Plan land use designations and Zoning regulations.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for a full service funeral home with related services including cremation services located in existing church buildings located at 1101, 1109 and 1113 5th Street in the General Commercial (C-2) Zone be granted subject to the following conditions:

1. All aspects of the funeral home to comply with applicable local, state and federal codes and standards for a full service funeral home with related services including cremation services, City of Modesto Standards, and also the California Building, Electrical, Mechanical, Plumbing, Energy and Green Codes adopted by the City of Modesto. If any application for a building permit is received after December 31, 2013, the 2013 California Building Codes will be applicable.
2. A complete review by the Building Safety Division shall be required once the Conditional Use Permit is attained, with complete detailed building plans submitted to the Building Safety Division for a building permit.
3. All signs shall comply with the C-2 Zone.
4. At the time of issuance of a building permit, the applicant 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.
5. Prior to issuance of a building permit, all plans shall be stamped and signed by a licensed architect or engineer. Submitted plans shall demonstrate the location of the funeral home facilities, location of cremation facility and technical sheets of the cremation appliance, and use of all other rooms within those buildings.
6. All landscaping, fences and walls shall be maintained and the premises shall be kept free of weeds, trash and other debris.

7. All conditions of Board of Zoning Adjustment Resolutions No. 497 and No. 812 not otherwise in conflict with this action shall remain full and in effect.
8. The property owner and applicant 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.

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 December 19, 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 December 19, 2013, by Hank Pollard, who moved its adoption, which motion was seconded by Dennis Smith and carried by the following vote:

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