

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2014-06

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR A TWENTY-FOOT HIGH FREESTANDING SIGN WITH ELECTRONIC MESSAGE BOARDS IDENTIFYING THE MCHENRY VILLAGE SHOPPING CENTER, LOCATED ON THE MCHENRY AVENUE FRONTAGE AT THE WEST SIDE OF THE MCHENRY VILLAGE SHOPPING CENTER, AT 1700 MCHENRY AVENUE (ROBERT E. FLEISCHER, STANDARD MANAGEMENT COMPANY)

WHEREAS, an application for a Conditional Use Permit to replace the existing freestanding sign identifying the McHenry Village Shopping Center, located at the McHenry Avenue frontage at the west side of the McHenry Village Shopping Center, at 1700 McHenry Avenue, with a 20-foot high freestanding sign of no more than 72 square feet per sign face, each face containing color-LED electronic reader boards of no more than 50-square feet per sign face, was filed by Robert E. Fleischer on May 7, 2014; 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 26, 2014, 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 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) because the Code allows for freestanding identification signs and electronic message board signs for shopping centers of more than five acres where located on an arterial street or expressway.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because the use for which the sign would identify is consistent with the Mixed Use land use designation of 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 the freestanding sign will be required to meet all applicable Zoning and Building Codes.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because the freestanding sign will be required to operate in accordance to the City's Zoning Code which regulates

electronic sign placement and sets limitations for message movement, transition, duration and brightness.

5. 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 for a two-sided twenty-foot high freestanding sign with electronic reader boards on each sign face identifying the McHenry Village Shopping Center, located on the McHenry Avenue frontage at the west side of the McHenry Village Shopping Center, opposite of Judith Lane, at 1700 McHenry Avenue be granted subject to the following conditions:

1. All development shall conform to the plans titled "McHenry Village" stamped and approved by the Board of Zoning Adjustment on June 26, 2014.
2. The two-sided freestanding sign shall be located and operated in conformance to all requirements and limitations outlined in Section 10-6.108(f)(1)(ii) of the Modesto Municipal Code.
3. At no time shall the color LED electronic message board display video as defined by Section 10-6.102(aaa), Video Display Sign.
4. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the City Engineer or designee.
5. 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 26, 2014, 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 June 26, 2014, by Hank Pollard, who moved its adoption, which motion was seconded by John Bergman and carried by the following vote:

Ayes:	Bergman, Matas, Morris, Pollard, Rodriguez
Noes:	None
Absent:	Smith
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