

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2019-04

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO JIVTESH GILL FOR A 9,400 SQUARE FOOT OFFICE BUILDING WITH A 3,200 RESTAURANT SUITE, LOCATED AT 4506 DALE ROAD

WHEREAS, Government Code Section 65450 et. seq. permits cities and counties to adopt specific plans for the systematic implementation of the General Plan and to provide for a greater level of detail in planning sites or areas of special interest or value; and

WHEREAS, on April 1, 1997, the City Council by Resolution No. 97-159 adopted the Kiernan Business Park Specific Plan; and

WHEREAS, on May 2, 2017, the City Council by Resolution No. 2017-171 adopted an amendment to Section III-B.1 of the Specific Plan to further define the allowable and conditional uses in the Business Park land use designation of the Specific Plan, particularly as regards to ancillary uses throughout the Business Park land use designation and retail, restaurant or personal services on properties within the Business Park land use designation on those parcels that have frontage on Dale Road; and

WHEREAS, Section III-B-1 of the Specific Plan as amended allows as a permitted use within the Business Park land use designation gas stations with convenience stores, without car washes, on parcels with frontage on Dale Road, and allows as a conditional use retail, restaurant or personal service uses with a maximum of 50% of floor area or 5,000 square feet per building, whichever is less, on parcels with frontage on Dale Road; and

WHEREAS, an application for a Conditional Use Permit for a 9,400 square foot office building with a 3,200 square foot restaurant suite located at 4506 Dale Road, was filed by Jivtesh Gill on March 19, 2019; 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 May 23, 2019, in Chambers, 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 2019-16, which concludes that no major revisions to the previously-certified Kiernan Business Park Specific Plan Amendment No. 4 Program EIR (SCH No. 2007062071) are needed as a result of the project, and that, pursuant to Section 15162 and 15164 of the CEQA Guidelines, no new environmental review is required.

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

1. The proposed project does not undermine the purpose and intent of the Business Park designation because the proposed restaurant suite is less than 50% of the floor area of the building, and retail, restaurant and personal service uses are necessary to serve the employees and guests of the business park.
2. The proposed project will integrate with the Business Park designation design expectation for a campus-like environment and high quality buildings because the site plan and building elevations demonstrate adherence to the design standards of the Specific Plan.
3. The proposed project will be compatible with surrounding uses and the proposed conditions of approval will ensure compatibility with surrounding uses because the siting of the building is oriented to the Dale Road frontage of the property, approximately 200 feet distant from a nearby residence, the site plan provides for an eight-foot high concrete masonry wall with a ten-foot landscape planter along the contiguous property line between the site and the residence, and the site is adjacent to the Mixed Use land use designation of the Specific Plan, which allows for retail uses.
4. The proposed conditional use permit is consistent with the objectives and requirements of Title 10 (Zoning Regulations) because retail, restaurant or personal services uses of less than 50% of the floor area of a building within the land use designation on properties with frontage on Dale Road is allowed with a Conditional Use Permit.
5. 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 Business Park and this designation allows uses as permitted by the underlying Kiernan Business Park Specific Plan.
6. 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 conditions as applied will minimize any potential impacts to neighboring uses.
7. There are no substantial changes proposed in the project which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.
8. No substantial changes have occurred with respect to the circumstances under which the proposed project are undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

9. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Kiernan Business Park Specific Plan Amendment #4 EIR was adopted which shows any of the following:
 - a. one or more significant effects which is not discussed in the Kiernan Business Park Specific Plan Amendment #4 EIR, or
 - b. significant effects which were previously examined will be substantially more severe than previously shown, or
 - c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or
 - d. mitigation measures or alternatives which are considerably different from those analyzed in the Kiernan Business Park Specific Plan Amendment #4 EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
10. The Initial Study, Environmental Assessment No. EA/C&ED No. 2109-16, provides the substantial evidence to support findings 4-7, above, and the City hereby determines that no further environmental documentation is required for the proposed project.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for a 9,400 square foot office building with a 3,200 square foot restaurant suite located at 4506 Dale Road be granted subject to the following conditions:

1. Prior to the issuance of a building permit, all development shall conform to the development plan and building elevations titled "Proposed New Development, 4506 Dale Road", stamped approved by the Board of Zoning Adjustment on May 23, 2019.
2. Prior to Certificate of Occupancy for the first building or recordation of a Parcel Map, whichever occurs first, the developer shall execute a Reciprocal Access and Parking Agreement which shall provide for reciprocal vehicular and pedestrian access and vehicular parking between the three parcels of the parcel map and the adjacent parcel to the northeast, APN 078-015-028, to the satisfaction of the Director of Community and Economic Development or designee and in a form provided by the Land Development Engineering Division and approved by the City Attorney.
3. Prior to Certificate of Occupancy for the first building or recordation of a Parcel Map, whichever occurs first, ten-foot-wide public utility easements shall be dedicated along the frontages of Dale Road, Grewal Parkway and Bangs Avenue.

4. 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.
5. Prior to occupancy of any structure, striping of parking stalls, aisles and driveways shall conform to the provisions of MMC Section 10-5.105, Parking Lot Design Standards.
6. At the time of development, all existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the Utility Companies and City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be reserved as required.
7. Prior to 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. Lighting shall be in accordance to the standards of the Kiernan Business Park Specific Plan Section IV-A.2.n, and shall demonstrate adequate shielding to minimize glare or light spillage upon the neighboring residents.
8. All signs shall comply with the Specific Plan's standards for signage within the Business Park land use designation. Prior to issuance of a sign permit, individual sign plans for the project shall be submitted for separate review and approval prior to installation.
9. 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.
10. 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.
11. Fire hydrants are required on the East side of Dale Road and the South side of Grewal Parkway adjoining the subject property. The installation of these fire hydrants shall be at 300-ft on center with the distribution layout in coordination with existing fire hydrants in the vicinity.
12. Fire hydrants and underground fire mains shall be installed in accordance with Modesto Standard Specifications.
13. The proposed project is within the boundary of Community Facilities District 2016-01 (Kiernan Business Park East No. 2 CFD). The property is required to annex into the CFD prior to the issuance of any building permits. The annexation process has been initiated but not completed,

therefore the Maximum Special Taxes will be calculated for the property upon annexation into the CFD.

14. Capital Facilities Fees (CFF) will become due at the time the properties are developed. The CFF will be calculated based on the proposed use at the time building plans are submitted and due at the time the permit is issued.
15. Any public improvements that are missing damaged or not to current City standards shall be designed and constructed per City standards in accordance with City Code (Article 7-1.701). Such improvements may include, but not be limited to curb & gutter, drive approach, sidewalk, ADA access ramps, fire hydrants and street lights.
16. All public improvement plans shall be designed by a Registered Engineer, reviewed and approved by the City Engineer prior to issuance of an Encroachment permit.
17. Water and Wastewater mains in Dale Road and Bangs Avenue are available for connection. An Encroachment Permit shall be obtained from the City prior to any construction in the public Right-of-way.
18. Storm Water shall be constructed per the approved Kiernan Business Park East Facilities Master Plan and its amendments thereof.
19. 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 City of Modesto Guidance Manual for Development, Stormwater Quality Control Measures and the City of Modesto Municipal Code.
20. 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, treat, and infiltrate the first 0.5" of stormwater run-off on site, and incorporate pervious landscape features into the project design wherever possible.
21. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grass swale, bioretention, vegetative strip, or other approved proprietary device) to remove pollutants from the first 0.5" of stormwater run-off from site.
22. 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.
23. Prior to the issuance of a Grading, Demolition, or Building Permit, Property Owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording.

24. 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.
25. The Construction General Permit requires the Property Owner to develop a Stormwater Pollution Prevention Plan (SWPPP) for the project. The SWPPP shall include a description of all erosion, sediment, and pollution control BMPs to be used at the construction or demolition 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. Prior to issuance of a Grading, Demolition, or Building Permit, provide one paper copy of SWPPP to Land Development Engineering, Stormwater.
26. Applicant shall submit Landscape and Irrigation (L & I) plans for review and approval by the City's Park Planning and Development Division. L&I plans shall meet current State of California water use ordinance requirements, Modesto Municipal Code (MMC) requirements and City of Modesto standards at time of submittal.
27. Applicant shall provide street trees along Dale Road and Bangs Avenue spaced thirty five (35') feet on center and located within seven feet (7') of back of sidewalk, or curb.
28. Applicant shall install parking lot shade trees per MMC requirements; one (1) shade tree for every eight (8) parking stalls and within seven feet (7') of stall.
29. Applicant shall install the required three foot (3') high screening at parking stalls facing the street frontages for vehicle headlights.
30. Climbing vines shall be installed in the landscape on all trash enclosures, and masonry walls visible to the public to discourage tagging.
31. Applicant shall install a separate landscape water meter for each parcel developed.
32. LID control and treatment measures shall be vegetated for erosion protection and sediment entrapment to collect/treat storm water run-off before entering the storm drain system. Storm drainage basins shall be appropriately landscaped and irrigated to address the specific type of storm water control measure.
33. Applicant shall install bicycle parking racks as part of the project development per MMC and Green Building Code.
34. 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.

35. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
36. 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.
37. Except as amended herein, or by reference, all development shall be in accordance with the Kiernan Business Park Specific Plan.
38. 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.

In addition, the following recommended Conditions of Approval are mitigation measures from the Kiernan Business Park Specific Plan Amendment No. 4 Final Environmental Impact Report that are applicable to the project:

40. The project developers shall review Regulation VIII of the SJVAPCD regulations and submit a compliance plan to the City of Modesto prior to commencing any phase of construction. The compliance plan must demonstrate that the current requirements of Regulation VIII will be implemented.
41. Prior to the issuance of construction contracts, the project developers shall perform a review of new technology, as it relates to heavy-duty equipment, to determine what, if any, advances in emissions reduction are available for use. (Information is available at CARB's website <http://www.arb.ca.gov/msprog/aftermkt/aftermkt.htm>.) Recently, CARB initiated a number of incentive programs to offer funds for retrofitting existing heavy-duty engines in public and private fleets to reduce PM and NOx emissions. CARB has evaluated and certified retrofit systems to be used in PM or NOx incentive programs. (Applicants who plan to participate in any of the CARB's retrofit programs may obtain additional information by viewing the CARB's Diesel Mobile Programs website at <http://www.arb.ca.gov/diesel/mobile.htm>.) The SJVAPCD should be consulted during this process.
42. Dust suppression shall be implemented on all disturbed areas, including inactive outdoor storage piles, by application of water, chemical

stabilizer/suppressant, or covering with a tarp, vegetative ground cover, or other suitable cover.

43. Dust suppression shall be implemented following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles using water or chemical stabilizer/suppressant.
44. Dust suppression shall be implemented on all on-site unpaved roads, and off-site unpaved access roads used during the construction phase, using water or chemical stabilizer/suppressant.
45. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions by application of water during the activity or by presoaking.
46. 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.
47. The project developers shall limit traffic speed on unpaved roads to 15 miles per hour.
48. The project developers shall install sandbags or other control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.
49. The project developers shall install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site, to prevent track-out of soil to public roadways.
50. The project developers shall install windbreaks at windward sides of construction areas, if necessary to prevent wind-blown dust.
51. The project developers shall suspend excavation and grading activity when winds exceed 20 miles per hour.
52. The project developers shall limit the area subject to excavation, grading, and other construction activity at any one time.
53. The project developers shall ensure that the accumulation of mud or dirt (track-out) is expeditiously removed from adjacent public streets if it extends more than 50 feet from the construction site or at least once every 24 hours when construction activities are occurring (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions).
54. The project developers shall use alternative-fuel construction equipment, where feasible.
55. The project developers shall minimize idling time (e.g., to a 10-minute maximum).

56. The project developers shall limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use to the minimum practical.
57. The project developers shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.
58. The project developers shall take steps to curtail construction activity during periods of high ambient pollutant concentrations; this may include reducing construction activity during the peak hour of vehicular traffic on adjacent roadways or ceasing construction activity during days declared as Spare the Air days by the SJVAPCD.
59. The project developers shall manage activity tasks to reduce cumulative short-term impacts.
60. Mitigation Measure G.1a (Page 21 of the Mitigation Monitoring and Reporting Program): Implementation of formal CDFG guidelines (Staff Report on Burrowing Owl Mitigation) to avoid and minimize impacts to Burrowing Owls. In conformance with federal and state regulations regarding the protection of raptors, a habitat assessment in accordance with CDFG guidelines for Burrowing Owls should be completed prior to the start of construction. Burrowing Owl habitat on the project site and within a 500-foot (150 m) buffer zone should be assessed. If the habitat assessment concludes that the site and immediate vicinity lack suitable Burrowing Owl habitat, no additional action would be warranted.

However, if suitable habitat is located on, or immediately adjacent to, the site, all Burrowing Owl habitat should be mapped at an appropriate scale, and the following mitigation measures should be implemented:

- a. In conformance with federal and state regulations regarding the protection of raptors, a pre-construction survey for Burrowing Owls, in conformance with CDFG guidelines, should be completed no more than 30 days prior to the start of construction within suitable habitat. Three additional surveys should also be completed per CDFG guidelines prior to construction.
- b. No Burrowing Owls will be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.
- c. A 250-foot (76 m) buffer, within which no new activity will be permissible, will be maintained between project activities and nesting Burrowing Owls during the nesting season. This protected area will remain in effect until August 31, or at the CDFG's discretion and based upon monitoring evidence, until the young owls are foraging independently.

- d. If accidental take (disturbance, injury, or death of owls) occurs, the CDFG will be notified immediately.
- 61. If archaeological resources are discovered at any time during construction, all activity shall cease, until the site is surveyed by a qualified archeologist. The survey shall include mitigation measures, which shall be implemented before construction resumes.
- 62. The project proponent shall prepare an SWPPP for each development project under the Specific Plan (or one master SWPPP for all development) designed to reduce potential impacts to surface water quality through the construction period of all of the project components (whether or not the particular portion of the project disturbs more than 1 acre). The project SWPPP shall include and adequately address all elements in the State General Construction Permit (Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity, State Water Resources Control Board Order Number 99-08-DWQ).
- 63. Construction activities are to comply with Modesto Municipal Code Title 4, Chapter 9.

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 May 23, 2019, 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 May 23, 2019, by Board Member Blom, who moved its adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

Ayes: Blom, Goriel, Moradian, Roddick, Selover, Vohra
Noes: None

Absent: Rodriguez
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