

PLANNING COMMISSION  
RESOLUTION NO. 2019-24

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL AN AMENDMENT TO SECTION 27-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D (601), PROPERTY LOCATED AT 1442 SCENIC DRIVE (J.B. ANDERSON LAND USE PLANNING)

WHEREAS, a verified application for an amendment to Section 27-3-9 of the Zoning Map was filed by J.B. Anderson Land Use Planning on January 17, 2017, to rezone from Low Density Residential (R-1), to Planned Development Zone, P-D (601), to allow a 49 unit apartment complex on 2.25 acres, property located on the south side of Scenic Drive southwest of the intersection of Scenic Drive and Brighton Avenue described as follows:

All that certain real property situate in the City of Modesto, County of Stanislaus, State of California, lying within the Northwest Quarter of the Northwest Quarter of Section 27, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

R-1 to P-D(601)

BEGINNING at the Southeast corner of the Northwest Quarter of the Northwest Quarter of said Section 27, said point of commencement also being the Southeast corner of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on July 27, 1984 as Instrument No. 4717; thence North 89° 41' 36" West along the South line of the Northwest Quarter of the Northwest Quarter of Section 27 and the South line of said Rifenburg Parcel a distance of 64.69 feet to the Southwest corner of said Rifenburg Parcel; thence continuing North 89° 41' 36" West along said South line of the Northwest Quarter of the Northwest Quarter of Section 27 a distance of 261.81 feet to the Southeast corner of that parcel of land conveyed to Timothy McClary by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on March 6, 1988 as Document No 20820; thence North 15° 56' 36" West along the Easterly line of said McClary Parcel a distance of 130.64 feet to the Southwest corner of that parcel of land conveyed to Kevin McMiller, et ux, by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on May 11, 2006 as Document No. 70621; thence North 69° 14' 21" East along the South line of said McMiller Parcel a distance of 64.91 feet to the Southeast corner thereof; thence North 15° 56' 36" West along the East line of said McMiller Parcel, a distance of 164.5 feet to a point at the South Right-of-Way Line of Scenic Drive; thence North 69° 14' 21" East along the South Right-of-Way line of Scenic Drive a distance of 215.54 feet to the Northwest corner of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Correction Deed filed in the Office of the Recorder of the County of Stanislaus on January 29, 2008 as Instrument No. 8833; thence South 15° 56' 36" East a distance of 129.58 feet to the Southwest corner of said Rifenburg Parcel; thence North 76° 51' 22" East a distance of 60.21 feet to the Southeast corner of said Rifenburg Parcel; thence South 10° 28' 17" East along the East line of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Grant Deed filed in the

Office of the Recorder of the County of Stanislaus on August 21, 2007 as Instrument No. 107249, a distance of 37.98 feet to the northeast corner of that parcel of land conveyed to Raymond Frank Rifenburg, et al by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on July 27, 1984 as **Instrument No. 4717, thence continuing South 10° 28' 17" East** along the east line of said Rifenburg Parcel a distance of 236.21 feet to the Southeast corner of said Rifenburg Parcel and the Point of Beginning.

Also including the Southern half of the Right-of-Way of Scenic Drive, being immediately adjacent to the above description.

Containing 2.45 acres, more or less.

APNs 034-015-013, -014, -015 and -017.

WHEREAS, a public hearing was held by the Planning Commission on August 19, 2019, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2017-11, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2014042081) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety, or welfare because the proposed development will conform to City standards.
2. The requested change will result in an orderly planned use of land because the conditions of approval will ensure that the proposed project is compatible with the adjacent residential uses, and there are other apartment complexes located near this section of Scenic Drive in close proximity to the proposed development.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the proposed change to Planned Development allowing for new multi-family residential uses is consistent with the Modesto Urban Area General Plan, which designates the property as Residential (R), which allows for multi-family residential uses.
4. An Initial Study was prepared by the City of Modesto that analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report.

5. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code that was not identified in the Master EIR because the General Plan designation of Residential encompasses multi-family housing, as what will be allowed in this Planned Development Zone.
6. No new or additional mitigation measures or alternatives are required.
7. The subsequent project is within the scope of the project covered by the Master EIR.
8. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

BE IT FURTHER RESOLVED by the Planning Commission that it recommends to the Council as follows:

SECTION I

That Section 27-3-9 of the Zoning Map be amended to rezone from Low Density Residential (R-1) to Planned Development Zone, P-D (601), the above-described property in accordance with the following conditions:

1. Prior to the issuance of a building permit, all development shall conform to the Development Plan and building elevations titled "Scenic Village Apartments" stamped approved by the City Council.
2. The developer will abide by second story review requirements to preserve the privacy of the northern adjacent property in ways such as installing windows on the second and third stories of the northern face of Building C that are fixed and obscure or clerestory.
3. The developer shall erect a 7-foot high solid decorative masonry wall adjacent to R-1 Zones along the west property line (including that property line north of proposed Building C, bordering APN 034-015-009) and east property line, excluding that property line adjacent to Planned Development P-D(434). Wall must be constructed prior to occupancy of any structure.
4. Screen landscaping shall be installed along the west and east property lines of the project site where adjacent to are existing residential lots, as approved by the Parks, Recreation and Neighborhoods, prior to certificate of occupancy for the first building.
5. Prior to issuance of a building permit, trash enclosures shall be designed using building materials, colors and finishes which are consistent or compatible with those used for the residential buildings, as approved by the Community and Economic Development Director or designee. Climbing vines shall be included in the landscape surrounding the trash enclosures to discourage tagging.

6. The design of light fixtures and their structural supports should be architecturally compatible with the main structures on the site. Light fixtures should be architecturally integrated into the design of a structure to the satisfaction of the Director of Community and Economic Development or designee.
7. Along pedestrian corridors, the use of low mounted bollard light standards, which reinforce pedestrian scale, shall be used. Steps and ramps should be illuminated wherever possible, with built-in light fixtures to the satisfaction of the Director of Community and Economic Development or designee.
8. All signs shall comply with the sign requirements of the R-3 Zone.
9. Sizing of monument signs shall be in accordance to the requirements of the R-3 Zone. Placement of sign shall ensure clear line of sight for vehicles exiting the development.
10. Developer shall provide signage with appropriate landscaping for visibility and Clear Vision Triangles at Driveway entrances along Scenic Drive. Within the triangle, the area between tree (3) and eight (8) feet in height measured from top of curb adjacent to the front yard shall be clear.
11. 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 or designee. Equipment shall be placed underground or adequately screened through the use of landscaping or masonry walls.
12. Exterior building elevations showing building wall materials, roof types, exterior colors and appropriate vertical dimensions shall be included in the development construction drawings.
13. 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 or designee.
14. 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.
15. Any public improvements that are missing, damaged or not to current City standards shall be designed per City standards in accordance with City Code (Article 7-1.701), standards and specification. Such improvements may include, but not be limited to curb and gutter, drive approach, sidewalk, ADA access ramps, fire hydrants and street lights. All public improvements shall require an encroachment permit.

16. All new improvements, should they be necessary, shall be designed and constructed per City standards in accordance with City Code (Article 7-1.701). Such improvements will include, but not be limited to roadway, storm drainage, curb and gutter, drive approach, sidewalk, ADA access ramps, fire hydrants and street lights. 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. The proposed gated driveways shall be designed and improved to meet the requirements of the City Engineer or designee.
18. A master water meter is required at property line. The City will not maintain waterline on private property. Property owner will be responsible for maintenance, rehabilitation and replacement when required.
19. Developer shall submit estimated sewer demand calculations to confirm the 6 inch wastewater fly line in Scenic Drive has the capacity to serve the demands of this additional development with the improvement plans submittal for review and approval.
20. The developer must install and maintain a private, on site sewer pump to address the site grade elevation that is at a lower grade than Scenic Drive grade elevation.
21. Proposed project direct access to the public park will be subject to approval by the Parks, Recreation and Neighborhoods, Parks Planning and Development Division.
22. Developer must develop project in compliance with the City of Modesto Second Story development Standards
23. Prior to issuance of a building or encroachment permit, ten-foot-wide public utility easements shall be dedicated along the frontage of Scenic Drive.
24. Developer must submit drainage concept and calculations with plan review for the increased storm water runoff. Also the developer must submit a soils boring report that will indicate the water table level near the river which will determine the French drain design and function in wet years and long term.
25. The Developer shall build the project to meet current Fire Code regulations at the time of building permit submittal. Applicable requirements could include, but not be limited to, the installation of hydrants, sprinklers and Knox Boxes on any vehicle access gates.
26. The project shall manage storm water runoff on-site according to current City standards. Calculations and percolation test shall be submitted to the City for review and approval with the submittal of the improvement plans, prior to issuance of a building permit.

27. 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 and the City of Modesto Municipal Code.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. Prior to issuance of a building permit, applicant shall submit Landscape and Irrigation plans for review and approval by the City's Parks Planning and Development Division. L&I plans shall meet current State of California water use requirements, MMC requirements and City of Modesto standards at time of submittal.

35. Developer shall provide street trees along Scenic Drive. Tree(s) shall be spaced thirty five (35') feet on center and located within seven feet (7') of the sidewalk or curb. Existing trees to remain to the satisfaction of the Parks Planning and Development Manager or designee.
36. Parking lot shade trees shall be provided per MMC requirements; 1 shade tree per 8 stalls, continuous and intermitted stall locations, within seven feet of stalls (50% coverage within 10 years).
37. Developer shall install a separate landscape water meter.
38. 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. Provide total square feet of landscape in project information.
39. All department Conditions of Approval for the project shall be included with building plans and shall be continuously maintained on-site during project construction to the satisfaction of the Chief Building Official or designee.
40. 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.
41. 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 or designee.
42. Prior to Certificate of Occupancy for any structure, the applicant shall enroll and participate in the City's Crime-Free Multi-Family Housing Program as administered by the Modesto Police Department.
43. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be reserved as required.
44. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
45. 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.
46. Prior to start of construction, all-weather, hard-surfaced roadways shall be constructed and maintained free of obstructions at all times during

construction as required by Director of Community and Economic Development.

47. 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 Modesto Urban Area General Plan Master Environmental Impact Report that shall be applied to the project:

48. Reduce particulate emissions from construction, grading, excavation, and demolition to the maximum extent feasible in accordance with the requirements of SJVAPCD Regulation VIII. Regulation VIII was adopted to reduce the amount of particulate matter suspended in the atmosphere as a result of emissions generated from anthropogenic (man-made) fugitive dust sources.
49. Require all access roads, driveways, and parking areas serving new commercial and industrial development to be constructed with materials that minimize particulate emissions in accordance with the requirements of SJVAPCD Regulation VIII and are appropriate to the scale and intensity of use.
50. Reduce PM10 emissions from City-maintained roads to the maximum extent feasible.
51. Effectively stabilize dust emissions using water, chemical stabilizer / suppressant, cover with a tarp or other suitable cover or vegetative ground cover, all disturbed areas, including storage piles, which are not being actively utilized for construction purposes.
52. Effectively stabilize dust emissions using water or chemical stabilizer / suppressant, all onsite unpaved roads and off-site unpaved access roads.
53. Effectively control fugitive dust emissions utilizing application of water or by presoaking all land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities.
54. Wet all exterior surfaces of buildings that are more than six stories tall during demolition.
55. When materials are transported off site, cover all materials, or effectively wet them to limit visible dust emissions, and maintain at least six inches of freeboard from top of container.

56. Limit operations 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.)
57. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, effectively stabilize said piles for fugitive dust emissions utilizing sufficient water or chemical stabilizer / suppressant.
58. Within urban areas, immediately remove trackout when it extends 50 or more feet from the site and at the end of each workday.
59. Prevent carryout and trackout for any site with 150 or more vehicle trips per day.
60. Limit traffic speeds on unpaved roads to 15 mph.
61. Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent (1%).
62. Install wheel washers for all exiting trucks, or wash all trucks and equipment leaving the site.
63. Install wind breaks at windward side(s) of construction areas.
64. Suspend excavation and grading activity when winds exceed 20 mph (regardless of wind speed, an owner/operator must comply with Regulation VIII's 20 percent opacity limit).
65. Limit the area subject to excavation, grading, and other construction activity at any one time.
66. Implement noise-reducing construction practices as conditions of approval where substantial construction-related noise impacts would be likely to occur, such as with extended periods of pile driving, or where construction is expected to continue or where sensitive receptors would be affected by construction noise. Conditions of approval may include, but are not limited to:
  - i. Require construction equipment, including air compressors and pneumatic equipment to have properly maintained mufflers;
  - ii. Require impact tools to be equipped with shrouds or shields;
  - iii. Require that the quietest equipment available be used; and,
  - iv. Require selection of haul routes that affect the fewest number of people.
67. For any project that involves earth-disturbing activities within the archaeological resource study area (defined as the Riparian and Vernal

Pool Locations shown on MEIR Figure V-7-1), or on a site determined to be archaeologically or culturally sensitive by City staff through consultation with Native American tribes or bands and a qualified archaeologist, require the project applicant to implement the following mitigation measures, at a minimum:

(1) Where excavation or construction would occur outside of areas where development has occurred, or where excavation / construction would occur at depths greater than existing foundations, roads, and/or trenches in the immediate vicinity, evaluate the site via a qualified archaeologist retained by the project applicant. Said evaluation would include at minimum a records search, a Phase I pedestrian survey, and preparation of an archaeological report containing the results of this cultural resources inventory identification effort for submittal to the Central California Information Center. If a Phase II archaeological evaluation is recommended, complete a report of the survey and any excavations with recommendations prior to project approval;

(2) In the event of the discovery of a burial, human bone, or suspected human bone, immediately halt all excavation or grading in the vicinity of the find and protect the area of the find. The project applicant shall immediately notify the Modesto Police Department and County Coroner of the find and comply with the provisions of California Health and Safety Code Section 7050.5, including California Public Resources Code Section 5097.98, if applicable. If human remains are identified, also retain a Native American monitor at the applicant's expense;

(3) A qualified archaeological monitor will be present and will have the authority to stop and redirect grading activities, in consultation with the Native Americans and their designated monitors, to evaluate the significance of any Native American archaeological resources discovered on the property; and,

(4) Relinquish ownership of all Native American human remains and/or artifacts that are found within the project area, to the appropriate Native American Most Likely Descendent (MLD), as assigned by the Native American Heritage Commission, for proper treatment and disposition. The MLD will decide whether or not standard archaeological analysis will be allowed on human remains and associated artifacts from burials.

(5) If paleontological resources are discovered during earth-moving activities, the construction crew shall immediately cease work in the vicinity of the find, and the City's Planning Manager shall be notified. A qualified paleontologist shall evaluate the resource to determine if it is significant. If the resource is significant, prepare a proposed mitigation plan in accordance with Society of Vertebrate Paleontology guidelines. The proposed

mitigation plan may include a field survey of additional construction areas, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations determined by the lead agency to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resources were discovered.

68. Whenever possible, avoid disturbing or damaging archaeological resources. Preservation in place to maintain the relationship between the artifacts and the archaeological context is the preferred manner of mitigating impacts to archaeological sites. Preservation may be accomplished by:
- (1) Planning construction to avoid archaeological sites;
  - (2) Incorporating sites within parks, green space, or other open space;
  - (3) Covering the sites with a layer of chemically stable soil; and/or,
  - (4) Deeding the site into a permanent conservation easement.

When in-place mitigation is not feasible, data recovery through excavation may be necessary. A data recovery plan, which makes provisions for adequately recovering the scientifically consequential information about the site, shall be prepared and adopted prior to any excavation being undertaken. Such studies must be deposited with the Central California Information Center in Turlock, California. Special rules apply to any archaeological sites known to contain human remains (Health and Safety Code Section 7050.5; Guidelines Section 15126.4(b)).

Data recovery shall not be required if the lead agency determines that testing or studies already completed have adequately recovered the necessary data, provided that the data have already been documented in another EIR and are available for review at the California Historical Resource Regional Information Center (Guidelines Section 15126.4(b)).

69. Allow reasonable time for the qualified archaeologist to notify the proper authorities for a more detailed inspection and examination of the exposed cultural resources. During this time, excavation and construction would not be allowed in the immediate vicinity of the find; however, those activities could continue in other areas of the project site.
70. If any find is determined to be significant by the qualified archaeologist, representatives of the construction contractor and the City, the qualified archaeologist, and a representative of the Native American community (if the discovery is an aboriginal burial) will meet to determine the appropriate course of action.

71. All cultural materials recovered as part of a monitoring program are subject to scientific analysis, professional museum curation, and a report prepared according to current professional standards.

SECTION II

BE IT FURTHER RESOLVED that the following uses shall be authorized in said Planned Development Zone as shown on the development plan:

High Density Residential R-3

SECTION III

IT IS FURTHER RECOMMENDED that the entire construction program be accomplished in one phase, construction to begin on or before August 19, 2024, and completion to be not later than August 19, 2026.

SECTION IV

BE IT FURTHER RESOLVED by the Planning Commission that it recommends to the City Council that they adopt a resolution certifying that the rezoning is within the scope of the General Plan EIR.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on August 19, 2019, by Commissioner Smith, who moved its adoption, which motion was seconded by Commissioner Pollard and carried by the following vote:

Ayes:	Pollard, Smith, Vohra, Morad
Noes:	None
Absent:	Birring, Escutia–Braaton, Lucas
Recused:	None

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

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