

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2020-04

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO SMART AXE CORP TO ALLOW AN INDOOR RECREATION BUSINESS ON A PROPERTY IN THE SPECIFIC PLAN ZONE APPROVED FOR NEIGHBORHOOD COMMERCIAL (C-1) USES LOCATED AT 3020 FLOYD AVENUE

WHEREAS, an application for a Conditional Use Permit for an indoor recreation facility within a building located in the Specific Plan Zone approved for Neighborhood Commercial (C-1) uses located at 3020 Floyd Avenue, was filed by Smart Axe Corp on April 3, 2020; 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 28, 2020, in accordance with Executive Order N-29-20, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed conditional use is exempt from CEQA, pursuant to Section 15301 of the CEQA Guidelines, which exempts existing facilities that include the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination; and

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 regulations allow for indoor recreation facilities on a property approved for Neighborhood Commercial (C-1) uses upon securing 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 proposed use is located in an area designated as "Commercial" in the City of Modesto Urban Area General Plan that provides for a range of commercial uses to serve the Modesto population.
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:
 - a. The proposed indoor recreation facility will be located within an existing commercial building in an established commercial area.
 - b. The location of the proposed indoor recreation facility is separated from the adjacent residential uses by Roselle Avenue, an arterial street.

4. The proposed conditions of approval will ensure compatibility with the surrounding uses because the existing building will not be expanded or altered beyond tenant improvements required for the operation of an indoor recreation facility.
5. The proposed conditional use is exempt from CEQA, pursuant to Section 15301 of the CEQA Guidelines, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 3020 Floyd Avenue be granted subject to the following conditions:

1. All aspects of the project shall comply with current City of Modesto Standards and current California Building, Electrical, Plumbing, and Energy Codes adopted by the City of Modesto.
2. All signs shall comply with the sign requirements of the C-1 Zone.
3. The facility shall adhere to the provisions of the City's Noise Regulations as outlined in Title 4, Chapter 9 of the Modesto Municipal Code.
4. Prior to issuance of a Building Permit, plans shall be stamped and signed by a licensed Architect or Engineer. Submitted plans shall include but not be limited to the following:
 1. The location and dimensions of all entrances and exits;
 2. The location of all fixtures and seating.
5. At the time of issuance of a building permit, the developer shall pay all applicable 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.
6. 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.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on May 28, 2020, by Board Member Moradian, who moved its adoption, which motion was seconded by Board Member Rodriguez and carried by the following vote:

Ayes:	Blom, Moradian, Roddick, Rodriguez
Noes:	None
Absent:	Selover, Vohra
Recused:	Goriel

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF
MODESTO.

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