

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2020-06

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO R5 GROUP TO DEVELOP 44 APARTMENTS LOCATED ON THE EAST SIDE OF DALE ROAD NORTH OF VENEMAN AVENUE

WHEREAS, an application for a Conditional Use Permit for 44 units of multifamily housing located on the east side of Dale Road north of Veneman Avenue, was filed by R5 Group August 24, 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 before the Board of Zoning Adjustment was scheduled for November 19, 2020, but postponed due to lack of quorum; and

WHEREAS, a public hearing was rescheduled to a special meeting held by the Board of Zoning Adjustment on December 15, 2020, in Chambers, 1010 Tenth Street, Modesto, California, 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 15332 of the CEQA guidelines, which exempts infill development projects meeting the conditions described in the section; 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 multifamily housing in the Professional Office Zone, or a Planned Development allowing Professional Office uses, upon securing a Conditional Use Permit from the Board of Zoning Adjustment.
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 MU "Mixed Use" in the City of Modesto General Plan. As multifamily housing is permitted in the P-O Zone or a P-D that allows P-O uses, with a Conditional Use Permit, the proposal is therefore consistent with 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 it has been determined that the proposed apartment project has adequately addressed any issues pertaining to such concerns.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because staff has evaluated development for

compliance with second-story regulations and the City's zoning regulations.

6. The proposed Conditional Use Permit is exempt from CEQA, pursuant to Section 15332 of the CEQA Guidelines, because this project is an in-fill development consistent with applicable general plan designations and policies as well as applicable zoning designation and regulation, is no more than 5 acres substantially surrounded by urban uses, has no value as habitat for endangered, rare or threatened species, would not result in any significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for east site of Dale Road, north of Veneman 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 as approved by the Board of Zoning Adjustment on November 19, 2020.
2. 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.
3. 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 Division.
4. 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 or designee.
5. 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.
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. Prior to building permit submittal, applicant shall provide plans which illustrate the proposed eastern stairways in the reversed direction as currently shown (rising toward the east). In addition, the entirety of the eastern most stairways, including the landing shall be screened to mitigate views

8. Prior to building permit submittal, applicant shall provide plans which illustrate full screening six feet high on the eastern second-story walkways west to the stairway and wing walls for two easternmost second-story windows on other side of the buildings.
9. All signs shall comply with the sign requirements of the Professional Office (P-O) Zone.
10. 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, fencing or masonry walls.
11. 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.
12. The project shall be subject to all conditions, requirements and recommendations from all other affected departments/agencies.
13. 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.
14. 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. 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.
15. Prior to submittal of building permit amend the proposed site plan, including the following:
 - a. Location of the existing 10-foot Public Utility Easement near the southeast portion of the property.
 - b. Location of the existing 10-foot Public Utility Easement along the Dale Road Frontage.
 - c. Full Dale Road right-of-way and adjacent parcel driveway locations, including those on the west side of Dale Road
 - d. Existing fire hydrant and proposed drive way on Dale Road.
16. Prior to Certificate of Occupancy for any structure, development must be built to

satisfy current fire code requirements, which may include the installation of fire hydrants, fire sprinklers and an electronic sprinkler monitoring system.

17. Developer shall submit Landscape and Irrigation (L&I) plans for review and approval by the City's Parks Planning and Development (PPD) Division. L&I plans shall meet current State of California water use requirements, Modesto Municipal Code (MMC) requirements and City of Modesto standards at time of submittal.
18. Developer shall provide a minimum ten-foot (10') landscape setback along Dale Road and property lines where proposed buildings are shown on plans; and a ten-foot (10') setback on east side, along proposed parking areas.
19. Developer shall provide, or protect in place, street trees along Dale Road, and spaced thirty-five (35') on center maximum and located within seven feet (7') of back of sidewalk, or curb.
20. Developer shall install parking lot shade trees per MMC requirements; one (1) shade tree for every eight (8) parking spaces, continuous and intermitted stall locations, within seven feet (7') of stalls. Shade trees are required for all parking stall locations proposed in the development.
21. Climbing vines shall be installed in the landscape on all trash enclosures; and masonry walls visible to the public to discourage tagging.
22. Developer shall install a separate landscape water meter for each parcel developed.
23. Developer shall install screening landscape along the eastern property line.
24. Developer shall install a 6-foot solid decorative masonry wall along eastern property line per Zoning Code.
25. 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 water catchment and treatment 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.
26. All aspects of this project to comply with current City of Modesto Standards and also current California Building, Electrical, Mechanical, Plumbing, Energy, Green codes adopted by the City of Modesto.
27. All department Conditions of Approval for the project shall be included with building plans and shall be continuously maintained onsite during project construction to the satisfaction of the Chief Building Official or designee.
28. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.

29. 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.
30. 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.
31. Developer shall connect to existing available 12-inch water main located in Dale Road. All applicable water connection fees shall be paid and an encroachment permit obtained from the City prior to any connection being made in the City's public Right-of-Way. Existing fire hydrant to be protected or relocated.
32. Developer shall connect to existing sewer connection to the parcel from the existing sewer main in Dale Road. If a new or an upgrade to the sewer service connection is requested, then an applicable sewer connection fees shall be paid and an encroachment permit issued from the City, prior to any work being done in the City's public Right-of-Way.
33. Developer shall install the proposed driveway on Dale Road as a 40-foot wide drop curb type, with minimum throat depth of 50-feet measured from the future property line, in accordance with the City's Standard Specifications.
34. Prior to issuance of building permit access/egress with adjacent properties needs to be clarified regarding location, and documentation. The applicant must present or record an access and maintenance agreement to allow the sharing of access from Dale Road as well as rear access to parcels adjacent to the north and south.
35. This area doesn't have City storm drain mains, therefore any storm water generated from this development shall be managed and stored on-site according to the City's Standard Specifications and current low impact development standards.
36. The proposed project disturbs one (1) or more acres of soil, and is therefore required to obtain coverage under the General Permit for Discharges of Stormwater associated with Construction Activity in accordance with Construction General Permit.
37. The proposed project is a Commercial Development of greater than 10,000 square feet, with a parking lot of greater than 5,000 square feet or 25 or more parking spaces), and is therefore considered a Priority Project.
38. 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.
39. 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 runoff on site, and incorporate pervious landscape features into the project design wherever possible.

40. 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.
41. 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 and floor of enclosures shall be graded to drain into adjacent landscape areas.
42. 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
43. 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.
44. Project approval shall become null and void two (2) years following November 10, 2022, unless a building permit is issued and construction is commenced, and diligently pursued toward completion.
45. 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 November 19, 2020, 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 special meeting of the Board of Zoning Adjustment held on December 15, 2020, by Board Member Rodriguez, who moved its adoption, which motion was seconded by Board Member Moradian and carried by the following vote:

Ayes:	Blom, Moradian, Rodriguez, Vohra
Noes:	Roddick
Absent:	Selover
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