

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2014-01

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO SHAKER AHMED TO CONVERT AN EXISTING OFFICE BUILDING TO MULTI-FAMILY RESIDENTIAL APARTMENTS LOCATED 823 17TH STREET

WHEREAS, an application for a Conditional Use Permit to convert an existing office building to multi-family residential apartments located at 823 17th Street, was filed by Shaker Ahmed on behalf of G.M. Rand on December 10, 2013; and

WHEREAS, Sections 10-1.302(a) and 10-9.703 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 January 23, 2014, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this project is Categorically Exempt under Section 15332 of the CEQA Guidelines, which pertains to In-Fill Development Projects, and is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; is within city limits and no more than five acres and surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; will 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.

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 multi-family residential uses in commercial zones with approval of a conditional use permit, and the project meets all standards and requirements of the R-3, Medium-High Density zone as required by the Zoning Regulations.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because residential uses are allowed in the Redevelopment Planning District designation.
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 this facility will be required to meet all applicable Zoning, Building and Fire Code Standards, and Stanislaus County Health and Safety Codes.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because the project is consistent with uses allowed in the redevelopment planning district which includes single level and

vertical mixed-use development (i.e.: multi-family developments, professional offices, and neighborhood retail).

5. The proposed project is categorically exempt from CEQA, in accordance with Guidelines Section 15332, because it involves in-fill development within an urbanized area. The existing office building is located on a project site of no more than five acres within the City of Modesto's Baseline Developed area and surrounded by existing office, commercial and residential uses. The project does not involve the use of significant amounts of hazardous substances, all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 823 17th Street be granted subject to the following conditions:

1. Prior to the issuance of a Building Permit, all development shall conform to the Plot Plan titled "Apartment Conversion (Fourplex) 823 17th St., Modesto, CA 95354 aka APN: 105-005-003" as stamped approved by the Board of Zoning Adjustment on January 23, 2014.
2. Prior to the issuance of a Building Permit, any variation from the approved site plan on file with the City must be reviewed and approved by the Director of Community and Economic Development or designee.
3. Prior to the issuance of a Building Permit, all construction documentation shall be coordinated for consistency, including but not limited to, electrical, landscape and irrigation, grading, and utility plans. All such plans shall be consistent with the approved entitlement plans on file with the Planning Department.
4. Prior to the issuance of a Building Permit, electric facilities and overhead lines shall be removed, relocated, or protected as required by the Modesto Irrigation District and the City Engineer or designee. Appropriate easements for electrical facilities shall be granted as required. Relocation or installation of electric facilities shall conform to the District's Electric Service Rules. Costs for relocation and/or undergrounding the District's facilities at the request of others will be borne by the requesting party.
5. Prior to 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. Prior to issuance of a Building Permit, improvement plans for required improvements shall be prepared stamped and signed by a Registered Civil Engineer and approved by the City Engineer or designee. Improvements shall be constructed in accordance with the approved plans.

7. Prior to the issuance of a Building Permit, all applicable connection, wastewater capacity and plan check fees shall be paid in full to the City of Modesto as acceptable to the City Engineer. Fees will be determined at the time of plan site design and/or plan approval.
8. All landscaping, walls, existing perimeter fencing and future fencing as required by conditional use permit approval, shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
9. Prior to Certificate of Occupancy for any structure, cable television service shall be stubbed into all units.
10. Prior to the issuance of a Building Permit, an application for a change of occupancy classification must be obtained from the Building Safety Division.
11. Prior to occupancy, fire sprinklers complying with NFPA 13 or 13R and the City of Modesto Standards shall be installed.
12. Prior to occupancy, smoke detectors, carbon monoxide detectors and fire alarm system as required by the current edition of the California Fire and Building Code shall be installed.
13. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.
14. All signs shall comply with the sign requirements of the R-3 Zone.
15. 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. Applications received after December 31, 2013 are subject to the 2014 Codes.
16. 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.
17. 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.

18. Project approval shall become null and void two (2) years following the effective date of approval, unless a building permit is issued and construction is commenced, and diligently pursued toward completion.

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 January 23, 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.

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 January 23, 2014, by Hank Pollard, who moved its adoption, which motion was seconded by John Bergman and carried by the following vote:

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

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

Original, signed copy on file in CEDD

Patrick Kelly, Secretary