

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2016-04

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO THE ASSYRIAN CHURCH OF THE EAST, C/O CAROL MATZKIND FOR A CHILDRENS PRESCHOOL LOCATED IN THE CHURCH SOCIAL HALL, PROPERTY LOCATED AT 1457 MABLE AVENUE (ASSYRIAN CHURCH OF THE EAST/CAROL MATZKIND)

WHEREAS, an application for a Conditional Use Permit for a children's preschool at the social hall of the Assyrian Church of the East, located at 1457 Mable Avenue, was filed by the Assyrian Church of the East and Carol Matzkind on February 26, 2016; and

WHEREAS, Section 10-9.102 of the Municipal Code authorizes the Board of Zoning Adjustment to grant Conditional Use Permits; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on March 24, 2016, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed project is categorically exempt from environmental review in accordance with Section 15303(c) of the California Environmental Quality Act Guidelines.

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 a child daycare or an educational use such as a children's preschool is allowed within a residential zone with approval of a Conditional Use Permit.
2. The proposed conditional use and the conditions under which it will operate is consistent with the General Plan because the project site is located within the Residential (R) land use designation which allows for church, school and child daycare uses.
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 the addition of preschool uses to the existing church social hall will be required to meet applicable Zoning, Building and Fire Code standards.
4. The proposed conditions of approval will ensure compatibility with the surrounding uses because the preschool is located within the existing social hall and adjacent grounds of the church, will operate at similar hours as local elementary schools, and all required parking is available on-site.

5. The proposed project is categorically exempt from CEQA in accordance to CEQA Guidelines Section 15303(c), which exempts the conversion of small structures not exceeding 10,000 square feet within an urbanized area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where 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 a children's preschool within the existing social hall of the Assyrian Church of the East, property located at 1457 Mable Avenue, 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 "Saint Zaia Preschool, 1457 Mable Avenue" and stamped approved by the Board of Zoning Adjustment on March 24, 2016.
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.
3. Prior to the issuance of a business license and commencement of preschool operations, a change of occupancy permit and issuance of a Certificate of Occupancy shall be required.
4. Prior to Certificate of Occupancy, a manual and automatic fire alarm system shall be required in areas used for preschool/daycare. The installation shall be in accordance with the California Fire Code (CFC) and NFPA 72. In addition, rooms used for sleeping or napping shall be equipped with smoke alarms.
5. Prior to Certificate of Occupancy, access gates from the main road to the social hall shall be openable to a clear and unobstructed width of sixteen (16) feet. Provisions to open the gate shall be provided either with electronic KNOX brand key pad, key box, or padlock.
6. Applicant shall meet current City of Modesto and State of California landscape and irrigation requirements for commercial buildings. Applicant shall submit Landscape and Irrigation plans to the City of Modesto's Parks Planning and Development Division for review and approval prior to issuance of a building permit.
7. Applicant shall meet current State of California and City of Modesto landscape water use requirements.
8. Per the State water ordinance, turf must be limited to areas used for recreational purposes only.
9. Applicant must provide the play structure layout and follow ASTM standards for playground design.
10. All preschool operations shall adhere to the regulations of Title 4, Chapter 9 of the Modesto Municipal Code (Noise Regulations).

11. All preschool operations shall conclude by 5:00 PM daily.
12. 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.
13. The property owner and developer shall, at their sole expense, defend, with counsel selected by the City, 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.

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 March 24, 2016, 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.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on March 24, 2016, by Jeff Morris, who moved its adoption, which motion was seconded by Amin Vohra and carried by the following vote:

Ayes:	Matas, Morris, Pollard, Rodriguez, Selover
Noes:	None
Absent:	None
Recused:	None

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

Original, signed copy on file in CEDD

Patrick Kelly, Secretary