

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2019-01

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ROODI
WILLIAM TO SERVE ALCOHOL AFTER 11:00 PM LOCATED 3322
MCHENRY AVENUE

WHEREAS, an application for a Conditional Use Permit to serve alcohol after 11:00 PM for a business located 3322 McHenry, was filed by Roodi William on October 11, 2018; 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 January 24, 2019, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Board of Zoning Adjustment continued this Conditional Use Permit to February 28, 2019, and directed staff to prepare a resolution of denial; and

WHEREAS, the Board of Zoning Adjustment on February 28, 2019, after hearing additional testimony, made a motion to approve this Conditional Use Permit but did not pass due to a lack of quorum; and

WHEREAS, the Board of Zoning Adjustment continued this Conditional Use Permit to May 23, 2019; and

WHEREAS, the Board of Zoning Adjustment on May 23, 2019, 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 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; 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 a bar, restaurant or other establishment serving alcohol after 11:00 PM in the Highway Commercial (C-3) Zone upon securing a Conditional Use Permit from the Board.
2. The proposed Conditional Use Permit 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 C "Commercial" in the City of Modesto

Urban Area General Plan. As restaurants and lounges which serve alcohol after 11:00 PM are permitted in the Highway Commercial (C-3) Zone with a Conditional Use Permit, the proposal is therefore consistent with the General Plan.

3. The proposed conditional use for hookah lounge serving alcohol past 11:00 PM 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 hookah lounge is located within an existing commercial building in an established commercial area.
 - b. The hookah lounge is adequately separated from the adjacent residential uses by approximately 83-feet of setback area and an existing six-foot high masonry wall.
 - c. As conditions of approval, the hookah lounge shall close or restrict access through the rear door and adhere to the provisions of Title 4, Chapter 9, Article 1 (General Noise Regulations) of the Modesto Municipal Code.
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 a hookah lounge and the restricted access from the rear door.
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 a hookah lounge in an existing commercial building serving alcohol after 11:00 P.M. 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-3 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. Outdoor activity shall be allowed in the front, along the west side of the building.
5. Rear person door must be converted to open as an emergency exit only with alarm.

6. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
7. 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:
 - a. The location and dimensions of all entrances and exits;
 - b. Accessibility to the stage;
 - c. The location of all fixtures and seating.
8. 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.
9. 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.

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 May 23, 2019, 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 regular meeting of the Board of Zoning Adjustment held on May 23, 2019, by Board Member Moradian, who moved its

adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

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

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

Original, signed copy on file in CEDD

Steve Mitchell, Secretary