

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2014-09

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR THE SALE OF BEER AND WINE AT REGAL CINEMAS LOCATED AT 3969 MCHENRY AVENUE (REGAL CINEMAS, INC.)

WHEREAS, an application for a Conditional Use Permit to allow for the sale of beer and wine for on-site consumption at the existing Regal Cinemas located at 3969 McHenry Avenue, was filed by Regal Cinemas, Inc. on July 10, 2014; 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 September 25, 2014, 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 certifies it has received and reviewed the Statement of Exemption, Environmental Assessment No. EA/C&ED 2014-21, which concludes that the project is categorically exempt from CEQA in accordance with CEQA Guidelines Section 15332, which exempts in-fill development where the site is within city limits, is less than five acres in size, is substantially surrounded by urban uses, has no value as a habitat for threatened species, is adequately served by utilities and public services, and is consistent with applicable General Plan land use designations and Zoning regulations.

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 Section 10-3.203 of the City of Modesto's Municipal Code Title 10 (Zoning Regulations) because the Zoning Regulations allow for the sale of alcohol when adjacent to residential zones after 11:00 p.m. in the Highway Commercial (C-3) Zone, 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 Regal Cinemas is located in an area designated as C "Commercial" by the Land Use Diagram of the City of Modesto Urban Area General Plan. The sale of beer and wine within a building is allowed in the Highway Commercial (C-3) Zone after 11:00 p.m. when located adjacent to residential zoned parcels with a Conditional Use Permit, and is therefore in conformance 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 the use will be required to meet all conditions of approval and all applicable Zoning, Building and Fire Code

Standards, prior to commencement of operations to sell beer and wine on the premises.

4. The proposed conditions of approval will ensure compatibility with the surrounding uses, because:
  - a. The sale of beer and wine will be within the confines of the existing theater and additional security will be provided in the parking lots adjacent to the residential neighborhoods to the west and north when special events and movie premiers are held that typically draw in larger crowds of patrons.
  - b. The facility entrance/exit is approximately 450 feet from the nearest residential use to the west and approximately 168 feet from the mobile homes to the north.
  - c. As a condition of approval the facility shall adhere to the provisions of Title 4, Chapter 7, Article 15 (Disorderly Conduct Regulations) and Title 4, Chapter 9, Article 1 (General Noise Regulations) of the Modesto Municipal Code.
5. The project is categorically exempt from CEQA in accordance with CEQA Guidelines Section 15332, which exempts in-fill development where the site is within city limits, is less than five acres in size, is substantially surrounded by urban uses, has no value as a habitat for threatened species, is adequately served by utilities and public services, and is consistent with applicable General Plan land use designations and Zoning regulations.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 3969 McHenry Avenue be granted subject to the following conditions:

1. Prior to operations to sell beer and wine, a building permit and a Certificate of Occupancy for an A-2 Assembly classification of the building, as required by the California Building Code and Fire Code, must be issued. The Certificate of Occupancy shall reflect the maximum allowed number of persons in the Facility as determined by the Building and Safety Division in the review of construction/tenant improvement drawings. Construction documents submitted for permit may be required to be sealed by a licensed design professional.
2. The operator shall operate and abide under all conditions of the State of California Alcoholic Beverage Control license Type 41, for on-site sale of beer and wine.
3. The operator shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, assaults, batteries, acts of vandalism, loitering, excessive

littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, lewd conduct, or police detention and arrests.

4. No more than two (2) alcoholic beverages shall be served to any one person during the course of a single movie. The number of drinks served to patrons shall be noted on the wristband issued to the guest.
5. Prior to utilizing the privileges of the CUP, the theater operator shall review security measures and operating policies related to the service of alcoholic beverages with the Modesto Police Department.
6. The theater operator shall take reasonable corrective action in the parking lot, if necessary, to ensure theater patrons do not disturb the quiet enjoyment of adjacent residents.
7. External advertising or promoting specific or individual beer and wine, including, but not limited to, window and exterior wall signage is prohibited.
8. Operator shall post clearly visible signs that read, "No Alcoholic Beverages Beyond This Point" at all exits.
9. As stated by the applicant, operations of the sale of beer and wine within the premises are to be from the hours of 11:00 AM to 1:00 AM daily. Regal Cinemas shall adhere to the provisions of the City's Disorderly Conduct regulations as outlined in Section 4-7.1502 et al of the Modesto Municipal Code, and the provisions of the City's Noise Regulations as outlined in Section 4-9.101 et al of the Modesto Municipal Code.
10. The property owner and applicant shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, with Counsel selected by the City 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 September 25, 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.

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 September 25, 2014, by Vladimir Rodriguez, who moved its adoption, which motion was seconded by Jeff Morris and carried by the following vote:

Ayes:	Matas, Morris, Rodriguez, Smith
Noes:	Pollard
Absent:	Bergman
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