

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2015-05

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO ALLOW A DAY CARE AND PRESCHOOL FOR CHILDREN'S CRISIS CENTER LOCATED ON THE WEST SIDE OF KIMBLE STREET BETWEEN JONES STREET AND FLOTO STREET.

WHEREAS, an application for a Conditional Use Permit for a day care and preschool at 141 and 143 Kimble Street, Modesto, CA, was filed by Michael Pratt, AIA, on behalf of the Children's Crisis Center on June 5, 2015; 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 September 24, 2015, 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 that as follows:

1. The proposed conditional use permit, with its conditions satisfied, is consistent with the objectives and requirements of Title 10 (Zoning Regulations) because an educational use is allowed within a residential zone with a conditional use permit approval.
2. The proposed conditional use, and the conditions under which it will operate is consistent with the General Plan because the site location is designated in the General Plan as Mixed Use and this designation allows both educational and residential uses to be located within it.
3. The proposed conditions of approval will ensure compatibility with the surrounding uses because the proposed plan and the conditions as applied will help mitigate issues that otherwise would be disruptive to the neighborhood.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 141 and 143 Kimble Street 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 " Children's Crisis Center Conditional Use Permit" and stamped approved by the Board of Zoning Adjustment on September 24, 2015.
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. 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 Department.
4. Prior to occupancy of any structure, striping of parking stalls, aisles and driveways shall conform to the provisions of MMC Section 10-2.2004, Parking Lot Design.
5. Prior to occupancy of any structure, fences and/or walls shall be constructed as follows, to the satisfaction to the Director of Community and Economic Development: an 8 foot-high masonry wall with decorative masonry pilasters and a cap treatment along the perimeter of the outside play area.
6. Prior to occupancy of any structure, walls shall be treated with a graffiti-proof coating along the rear property line in the alley way to the satisfaction of the Director of Community and Economic Development or Designee. Construction drawings shall note the type of graffiti treatment used.
7. Prior to issuance of a building permit, trash enclosures shall be designed using building materials, colors and finishes which are consistent or compatible with those used in the major buildings of the development, as approved by the Community and Economic Development Director.
8. All signs shall comply with the sign requirements of the R-2 Zone. Prior to issuance of a sign permit, individual sign plans for the project shall be submitted for separate review and approval prior to installation.
9. 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.
10. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
11. Prior to occupancy, the owner shall work with City of Modesto Traffic Operations and paint a 15 minute loading zone on curb in front of facility.
12. The operator of the facility shall stagger the arrival times and outdoor play times of the children to minimize the impact of the facility on the neighborhood.
13. Prior to building permit issuance, the applicant shall submit an off-site parking agreement which allows for 5 additional parking spaces, to the satisfaction of the Community and Economic Development Director.
14. 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 September 24, 2015, 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 24, 2015, by Robert Selover, who moved its adoption, which motion was seconded by John Bergman, and carried by the following vote:

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

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

Original, signed copy on file in CEDD

Patrick Kelly, Secretary