

RESOLUTION NO. 2022-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING DENSITY BONUS AGREEMENT NO. 2022-02 AS CONDITIONED TO ALLOW A THIRTY-FIVE UNIT SINGLE-FAMILY ATTACHED TOWNHOME DEVELOPMENT WITH SIX LIVE/WORK UNITS FOR THE PROPERTY LOCATED AT 1814 AND 1818 EAST FIRST STREET

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Angela Meyer, representing Brandywine Acquisition Group, LLC (Applicant), on behalf of David A. Colton Trust (Property Owner) is requesting approval of Density Bonus Agreement (DBA) No. 2022-02 as conditioned, to allow the construction of a thirty-five unit attached townhome development, six of which are proposed as live/work, with four onsite moderate-income affordable units, known as Cabrillo Crossing at 1814 and 1818 East First Street.
- B. The zoning designation for the subject property is Metro East Mixed-Use (MEMU) Overlay Zone (OZ-1) in the Active Urban land use district.
- C. The Metro East Mixed Use overlay district was adopted in 2007 as a result of interest in developing mixed-use residential and commercial projects in its project area. The regulating plan, which establishes land uses and development standards, allows a variety of housing and commercial projects, including mixed-use residential communities, live/work units, hotels, and offices.
- D. The California Density Bonus law allows developers to seek increases in base density for providing on-site housing units in exchange for providing affordable units on site. To help make constructing on-site affordable units feasible, the law allows developers to seek incentives/concessions or waivers that would help the project be built without significant burden and without detriment to public health.
- E. On June 27, 2022, the Planning Commission of the City of Santa Ana held a duly noticed public hearing and at that time considered all testimony, written and oral and unanimously (7-0) recommended that the City Council approve Density Bonus Agreement No. 2022-02 as conditioned. As part of its actions, the Planning Commission also voted unanimously (7-0) to

approve Site Plan Review No. 2022-03 and Tentative Tract Map No. 2022-02 to facilitate construction of the community as a for-sale development.

- F. On August 16, 2022, the City Council of the City of Santa Ana held a duly noticed public meeting and at that time considered all testimony, written and oral.
- G. The City Council determines that pursuant to SAMC Section 41-595.5, the project is in compliance with all applicable development standards outlined within the Metro East Mixed Use (MEMU) overlay district, with the exception of required on-site publicly-accessible open space, which, pursuant to the California Government Code sections 65915 through 65918, may be reduced through approval of the requested Density Bonus Agreement application.
- H. The City Council hereby determines that the following findings, which must be established in order to grant this Density Bonus Agreement pursuant to SAMC Section 41-1607, have been established for Density Bonus Agreement No. 2022-02 to allow construction of the proposed project:
 - 1. That the proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the city.

The proposed development will provide a 35-unit single-family attached townhome development, four of which are proposed as moderate-income affordable units, contributing toward the City's ownership housing stock to serve the needs of diverse and underserved populations. The area in which the project is proposed, the Metro East Mixed Use overlay district, currently contains multiple mixed-use communities either built, under construction, or entitled. The construction of this project will contribute toward an economically balanced community by providing housing for different demographic and income levels in an area rich with employment opportunities, commercial development, and market-rate housing.

- 2. That the development will not be inconsistent with the purpose of the underlying zone or applicable designation in the general plan land use element.

The project site is located in an area already identified in both the City's Zoning Code (the Metro East Mixed Use overlay district) and General Plan (the Land Use and

Housing elements) for new residential communities. Moreover, the proposed density of 25 units per acre is consistent with the anticipated development intensity of 90 units per acre in the General Plan Land Use element, and is below the density bonus provisions in the California Density Bonus Law for affordable, moderate-income, family-oriented projects.

3. That the deviation is necessary to make it economically feasible for the Applicant to utilize a density bonus authorized for the development pursuant to section 41-1603.

The proposed project requires one deviation through incentives/concessions: publicly-accessible open space. The one deviation described is as follows:

The MEMU regulating plan requires that publicly-accessible open space be provided along main street-facing façades. Because the project has frontage on only one street, meeting this requirement would result in the building being pushed back significantly from First Street and would render almost the first 1/4 of the site's depth unusable for building area, resulting in the developer reducing the number of units or reducing the square footage for private or common open space area. Moreover, in order to maintain the current proposed unit count, the developer would be required to construct additional levels, resulting in a different type of construction (steel-frame/Type I versus wood/Type III), further increasing development costs. If the publically accessible open space standard were applied as written, the result would be a significant loss of units and parking area. Pushing the building back would also reduce the contribution to creating a more urban, walkable environment. The Applicant intends to compensate for this reduction by providing ample private open spaces for each unit in the form of patios, balconies, and roof decks.

Section 2. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the

City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 3. In accordance with the California Environmental Quality Act (CEQA), the recommendation is exempt from further review pursuant to Section 15162 and 15168 (EIR No. 2018-15/State Clearinghouse Number 2006031041) of the CEQA Guidelines. The proposed development project has been determined to be adequately evaluated and is within the scope of the previously certified EIR.

The project is consistent with the City's General Plan and Metro East Mixed Use overlay district development standards, with the exception of onsite open space that is the subject of the density bonus agreement application. Furthermore, the project has been designed to be compatible with the scale of other residences in the area and is consistent with Policies 2.10 and 3.5 of the Land Use Element that supports new development which is compatible in scale and character with existing development in the area. The development of this vacant lot also supports Policy 1.3 of the Housing Element that promotes a complementary mix of land uses that improves the character and stability of neighborhoods.

Further, the proposed project will take place within city limits and is on a project site that is less than five acres in size and is surrounded by urban areas. The project site has no value as habitat for endangered, rare, or threatened species and is not identified in the General Plan as having such value. Approval of the project will not result in any significant effects relating to traffic, noise, air quality, or water quality. The City's Planning Division and Public Works Agency have reviewed the proposed project and have determined that the amount of traffic, noise, air quality impacts, and water quality impacts are below thresholds that would warrant further analyses.

Finally, the site will be served by all required utilities and public services as it is located within a heavily-urbanized area on First Street adjacent to major freeways. Based on this analysis, a Notice of Exemption for Environmental Review No. 2021-116 was filed for the project on June 28, 2022, following Planning Commission approval of the project.

Section 4. The City Council of the City of Santa Ana, after conducting the public hearing, hereby approves Density Bonus Agreement No. 2022-02 as conditioned in Exhibit A attached hereto and incorporated as though fully set forth herein. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not

limited to: the Request for City Council Action dated August 16, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

Section 5. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall attest to and certify the vote adopting this resolution.

ADOPTED this ____ day of _____, 2022.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM:

Ryan O. Hodge
City Attorney

By: _____


Ryan O. Hodge
Assistant City Attorney

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSTAIN: Councilmembers _____

NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, _____, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2022-XX to be the original resolution adopted by the City Council of the City of Santa Ana on _____, 2022.

Date: _____

Clerk of the Council
City of Santa Ana

Conditions for Approval for Density Bonus Agreement No. 2022-02

Density Bonus Agreement No. 2022-02 are approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, it shall meet the following conditions of approval:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this site plan review.

The Applicant must remain in compliance with all conditions listed below throughout the life of the development project. Failure to comply with each and every condition may result in the revocation of the site plan review.

A. Planning Division

1. All proposed site improvements must conform to the Development Project (DP) approval of DP No. 2021-30.
2. Any amendment to this Density Bonus Agreement, including modifications to approved materials, finishes, architecture, site plan, landscaping, parking, and square footages, must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the Site Plan Review or Density Bonus Agreement must be amended.
3. Walls and Fencing.
 - a. The applicant shall construct a minimum six-foot (6') tall perimeter wall, as measured from nearest adjacent finished sidewalk, surrounding the project site. The perimeter wall shall conform to all applicable Citywide Design Guidelines, including a split-face or painted design with regularly-spaced pilasters and decorative cap. The applicant is responsible for coordination with any adjacent property owners to avoid double-walls or gaps between walls where possible.
 - b. Climbing vines shall be planted at regularly-spaced intervals along all exposed walls and wrought-iron fencing to deter graffiti. All solid walls shall be finished with anti-graffiti coating.
4. All mechanical equipment shall be screened from view from public and courtyard areas.
5. A final detailed amenity plan must be reviewed and approved prior to issuance of any building permits. The plan shall include details on the hardscape design,

lighting concepts and outdoor furniture for amenity, plaza, or courtyard areas as well as an installation plan. The exact specifications for these items are subject to the review and approval by the Planning Division.

6. Prior to installation of landscaping, the Applicant shall submit photos and specifications of all trees to be installed on the project site for review and approval by the Planning Division. Specifications shall include, at a minimum, the species, box size (24 inches minimum), brown trunk height (10-foot minimum), and name and location of the supplier.
7. After project occupancy, landscaping and hardscape materials must be maintained as shown on the approved landscape plans.
8. Prior to issuance of building permits, the Applicant shall submit a construction schedule and staging plan to the Planning Division for review and approval. The plan shall include construction hours, staging areas, parking and site security/screening during project construction.
9. The applicant and any subsequent association or management is responsible for installing and routinely maintaining high efficiency Minimum Efficiency Reporting Value (MERV) filters of MERV 13 or better as indicated by the American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 52.2, in the intake of ventilation systems. Verification of installation shall be provided prior to project occupancy.
10. Property Maintenance Agreement. Subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement or incorporate the form of this condition within the Project's CC&R's with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - a. Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
 - b. Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of

trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);

- c. Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
- d. Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
- e. If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.
- f. The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties and obligations and responsibilities set forth under the maintenance agreement.
- g. The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.
- h. The execution and recordation of the maintenance agreement shall be a condition precedent to the final map being recorded.

- i. Developer shall work with staff to explore the feasibility of the following:
 - i. Incorporate an enhanced air quality filtration system that is greater than Minimum Efficiency Reporting Value (MERV) filters of MERV 13 or better.
 - ii. Incorporate a live/work affordable unit; if not feasible, the number of units and the size originally proposed must be preserved.
 - iii. The project CC&Rs should restrict the 300 square feet of ground floor of the live/work units to commercial space only.
(Planning Commission Conditions 6/27/2022)