

RESOLUTION NO. 2023-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING DENSITY BONUS AGREEMENT NO. 2023-02 AS CONDITIONED FOR A NEW RENTAL RESIDENTIAL DEVELOPMENT WITH TWENTY TWO UNITS FOR THE PROPERTY LOCATED AT 322 NORTH HARBOR BOULEVARD (APN: 198-051-17)

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

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

- A. The Jager Company, Ltd. (Applicant), on behalf of P&P Bros Corp. (Property Owner), is requesting approval of Density Bonus Agreement (DBA) No. 2023-02 and concurrent Site Plan Review (SPR) No. 2023-02 to allow the construction of a rental residential development, consisting of twenty-two apartment units with two units proposed as affordable to very low-income households earning less than 50 percent of the area median income (AMI) for the property located at 322 N. Harbor Boulevard.
- B. The Harbor Mixed Use Transit Corridor Specific Plan was adopted in 2014 to lay the foundation for a more livable and sustainable corridor by creating zoning to allow for new housing and mixed-use development opportunities, providing development flexibility to meet market demands, using a multimodal approach to circulation, and creating a stronger identity for the area. The regulating plan, which establishes land uses and development standards, allows a variety of housing and commercial projects, including affordable residential communities, live/work units, service and retail, and professional offices.
- C. 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.
- D. The Applicant's request has been thoroughly evaluated by the City's Development Review Committee (DRC) through Development Project No. 2022-03. Through this review, the DRC has considered the subject site, proposed development, and the Applicant's requests for incentives/concessions and waivers pursuant to the State's Density Bonus Law.

- E. Section 41-1607 of the Santa Ana Municipal Code (SAMC) requires an application for a density bonus agreement containing deviations (incentives/concessions and/or waivers) to be approved by the Planning Commission.
- F. On September 25, 2023, 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.
- G. The Planning Commission determines that the following findings, which must be established in order to grant this Density Bonus Agreement application pursuant to SAMC Section 41-1607, have been established for Density Bonus Agreement No. 2023-02 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 twenty-two residential rental units, including two units for very low-income households, contributing toward the City's rental housing stock to serve the needs of diverse and underserved populations. The area in which the project is proposed, the Harbor Mixed Use Transit Corridor, currently contains a mix of uses, including single-family residential, medium and medium-high density apartments, townhomes, and neighborhood- serving commercial. 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 in an area already identified in both the City's Zoning Code (the Harbor Mixed Use Transit Corridor) and General Plan (the Land Use and Housing elements) for new residential communities. Moreover, the City's General Plan land use designation for the project site is Urban Neighborhood-Medium High (UN-50), which allows for the development of semi-urban villages that are well connected to schools, parks, and shopping centers. These areas are accessible by multiple

modes of transportation, have lively and pedestrian-friendly streetscapes, and are designed to foster community interaction.

This designation allows a mix of uses, including medium and medium-high density apartments, townhomes, garden- or motor-court homes, and neighborhood- serving commercial. Mixed-use projects are allowed in both horizontal configurations, with commercial and residential uses side-by-side, and vertical, with commercial uses on the ground floor and residential above. Lastly, the proposed density of 64.71 dwelling units per acre (du/ac) is allowed by the density bonus provisions in the California Density Bonus Law for a eleven-percent affordability rate for two very-low income units (35-percent State Density Bonus).

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 two deviations through incentives/concessions: (1) minimum common open space and (2) building frontage type/floor height; as well as two deviations through a waiver; (1) lot size/width; and (2) onsite open space (i.e., open to the sky, open space design, and interior open space). The deviations are described as follows:

Minimum Common Open Space Requirement

Table 3-9 (Onsite Open Space Requirements) in the Harbor Mixed-Use Transit Corridor Plan (SP2) requires a minimum of 15 percent of the lot size to be provided as common open space or plaza space.

As proposed, the project provides 5 percent common open space or 800 square feet in the form of a common open deck on the second floor. Strict adherence to this common open space requirement would result in a reduction in the number of units that can be provided in the overall project, thus not achieving the full 35-percent density bonus to which the Applicant is entitled and affecting the feasibility to construct the project. In order to provide the required common open space and maintain the current proposed unit count, the developer would be required to construct additional floor levels, which would exceed the maximum allowable height as part of the Harbor Mixed Use Transit Corridor Plan (SP-2), and would further increase development costs making the project economically infeasible. To help alleviate the common

open space deficiency, the project proposes a 1,477-square-foot community room, a separate fitness room, and an average of 50 square feet of private open space per unit (1,100 square feet total), through use of private balconies/decks for each unit.

Building Frontage Type and Floor Height Requirement (Incentive/Concession)

Table 3-4 (Frontage Floor Height Minimums and Districts) of the SP2 indicate that arcade, gallery, shop front, forecourt, stop, and front yard/porch are the six allowed frontage types. As proposed, the project does not identify a frontage type that is consistent with SP2.

Maintaining the required frontage type and minimum floor heights would result in a complete site and architectural redesign, involving more of the site area dedicated to the frontages design. In order to maintain the current proposed unit count, the developer would be required to redesign the site and elevation design, further increasing development costs and potentially leading to a loss of residential units, and a loss of further open space. Additionally, adherence to the frontage and floor height minimum requirements would be economically infeasible, as it would require additional cost to provide the materials required for the allowed frontage types.

Lot Size/Width (Stacked Dwelling building type) (Waiver)

Table 3-3 (Building Type and Form) of the SP2 required Stacked Dwellings to have the minimum lot size dimensions of 130 feet deep and 125-200 feet wide. As proposed, the project is located in a lot with the lot size dimensions of 148.25 feet deep and 100 feet wide.

The proposed development is located on an existing lot surrounded by existing commercial and residential development. Specifically, the project is abutting an apartment complex that was first constructed in 1986 to the west and commercial buildings that were constructed in 1962 to the north and south. In order to comply with lot width standards, the developer would be required to purchase a lot to the north or south and demolish the existing development on either site. This would result in increasing costs and would make the project infeasible. Moreover, the development site and adjacent properties all have smaller than average lot widths, compared lots along north Harbor Boulevard. These

lots range in lot depth and width, but most exceed 200 feet in lot width. In comparison, the site would have a lot width and depth of 148.25 feet deep and 100 feet wide, with a deviation of 25 feet for the minimum required lot width. Although the site has a deviation of 25 feet in the lot width, the Applicant's stacked dwelling building design still accomplishes the intention of the SP2 by providing a compatible design and balanced composition of massing on the project site, with appropriate interior floor area and individual unit sizes.

Onsite Open Space (Stacked Dwelling building type) (Waiver)

Pursuant to the Open Space Standards in SP2, the total onsite open space open to the sky must be two-thirds and designed as a courtyard or forecourt. Based on the lot size for the proposed project, the total onsite open space open to the sky should be 1,482 square feet and designed as a courtyard or forecourt. As proposed, the project will have an 800 square-foot deck.

As proposed, the project provides 800 square feet of open space that is designed as a deck open to the sky. The deck will be furnished, landscaped, and connected to the interior 1,477-square-foot community room. The proposed configuration would provide a contiguous 2,277 square feet of open space. Strict adherence to the two-thirds requirement would lead to the elimination of two or more units, which would affect the feasibility to construct the project. In order to maintain the current proposed unit count, the developer would be required to construct additional floor levels or required to provide underground parking, which would further increase development costs and make the project financially infeasible. Moreover, due to the site's limited size, the project proposed podium level parking, and the residential units stacked above the podium parking. Creating a courtyard or forecourt, would result in the project reducing the number of units by two or more in order to adhere to the open space standards

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, an Environmental Impact Report (EIR) was prepared and certified in 2014 in order to address the potential environmental impacts associated with the Harbor Mixed Use Plan. A mitigation monitoring and reporting program (MMRP), findings of fact, and a statement of overriding consideration were adopted with the 2014 EIR. As proposed, the development is not anticipated to have additional environmental impacts not addressed in the 2014 EIR. Therefore, no additional environmental review will be required. Based on this analysis, a Notice of Exemption, Environmental Review

No. 2022-12 will be filed for this project. However, all applicable mitigation measures in the original EIR and associated MMRP will be enforced.

Section 3. 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 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Density Bonus Agreement No. 2023-02 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 Planning Commission Action dated September 25, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

[Signatures on the following page]

ADOPTED this 25th day of September 2023, by the following vote:

AYES: Commissioners:


NOES: Commissioners:

ABSENT: Commissioners:

ABSTENTIONS: Commissioners:

Bao Pham
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: 

Jose Montoya
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2023-XXX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on September 25, 2023.

Date: _____

Recording Secretary
City of Santa Ana

EXHIBIT A
Conditions for Approval for Density Bonus Agreement Application No. 2023-02

Density Bonus Agreement Application No. 2023-02 is 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 the Density Bonus Agreement.

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/termination of the Density Bonus Agreement.

1. All proposed site improvements must conform to the Development Project (DP) approval of DP No. 2022-03.
2. Any amendment to the DP No. 2022-03, including modifications to approved materials, finishes, architecture, site plan, landscaping, unit count, mix, 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 Development Project Review must be amended.
3. All mechanical equipment shall be screened from view from public and courtyard areas.
4. 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.
5. Prior to issuance of building permits, the Applicant shall provide written notification to the residential community located to the west of the site. This notification shall include comprehensive information about the nature of the proposed activities, anticipated timelines, and contact information for inquiries. The notification shall be delivered via certified mail. Additionally, a designated representative shall be available to address any concerns or inquiries raised by the residential community during this notification period.
6. Prior to issuance of building permits, the Applicant shall submit to the Planning Division and have approved a Parking Management Plan (PMP). The PMP shall

provide for measures to address any parking shortages that may result from the project, with terms including but not limited to:

- a. Requiring onsite parking permits (such as stickers or hang-tags) for any parking in the onsite parking spaces for both residents and guests;
 - b. Policies for maximum time vehicles may be parked in the surface parking spaces, including any guest parking; and
 - c. Policies for towing unauthorized vehicles; vehicles parked in unauthorized locations, such as fire lanes; vehicles parking in surface guest parking without a sticker, hang-tag, or other identifiers; and vehicles parked longer than any maximum guest parking timeframes allowed.
7. Two weeks prior to the commencement of construction, notification must be provided to property owners within 500 feet of the project site disclosing the construction schedule, including the various types of activities that would be occurring throughout the duration of the construction period.
8. Prior to installation of landscaping, the Applicant shall submit representative 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.
9. After project occupancy, landscaping and hardscape materials must be maintained as shown on the approved landscape plans.
10. Prior to final occupancy, a Property Maintenance Agreement must be recorded against the property. The agreement will be 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 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; and

- h. The execution and recordation of the maintenance agreement shall be a condition precedent to the Certificate of occupancy.