

RESOLUTION NO. 2022-XXX

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF SANTA ANA APPROVING
MODIFICATION TO CONDITIONAL USE PERMIT
NO. 2003-15 (NO. 2003-15-MOD-1) AS
CONDITIONED TO FACILITATE A SECOND
DRIVE-THROUGH LANE FOR AN EXISTING
ESTABLISHMENT FOR THE PROPERTY

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. Terry Womack, with Go2permitting, LLC, representing Chick-fil-A, Inc. (Applicant) and Bristol Retail XV, LLC (Property Owner), is requesting approval of a Conditional Use Permit (CUP) modification to facilitate the construction of a second drive-through lane for an existing Chick-fil-A eating establishment at 3601 South Bristol Street.
- B. Santa Ana Municipal Code ("SAMC") Sections 41-365.5(e) and 41-377.5(a) require approval of a CUP for eating establishments with drive-through window service.
- C. On July 28, 2003, the City of Santa Ana Planning Commission held a public hearing for the proposal of a new Krispy Kreme restaurant with drive-through window service and after-hours operations on the subject site. The Planning Commission unanimously recommended that the City Council approve CUP-2003-15, CUP-2003-16, and Amendment Application No. 2003-06, to allow for the new drive-through establishment, after-hours operations, and a zone change to the subject property from a Commercial Residential (CR) zone to a General Commercial (C-2) zone.
- D. On August 4, 2003, the City Council unanimously approved CUP-2003-15, CUP-2003-16, and Amendment Application No. 2003-06, and adopted an Initial Study and Mitigated Negative Declaration (IS/MND), and Mitigation Monitoring and Reporting Program (MMRP) for the subject site.
- E. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve a modification to CUP No. 2003-15 for this project as set forth by the Santa Ana Municipal Code.
- F. On December 12, 2022, the Planning Commission held a duly noticed public hearing for CUP No. 2003-15-MOD-1.

G. The Planning Commission of the City of Santa Ana has considered the information and determines that the following findings, which must be established in order to grant CUP No. 2003-15-MOD-1, for drive-through window service, have been established as required by SAMC Section 41-638:

1. That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

The proposed eating establishment will provide a service and facility, which will contribute to the general well-being of the neighborhood and community. The existing building will remain as a utilized and viable commercial use. The building will maintain its current architectural style with new parapet wall, earth tone color palette, thin stone veneer, smooth stucco finishes, and canopies and trim. The architecture is designed to maximize the building's prominence on Bristol Street and enhance the streetscape as a commercial corridor.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The addition of a second drive-through lane will not be detrimental to the health, safety or welfare of those residing or working in the vicinity as it is designed and intended to generate the least amount of impacts as possible. The drive-through lane meets the City's stacking requirements and will allow for a minimum of nineteen cars to queue without disrupting drive aisles or on-site parking spaces. In addition, vehicles queuing in the drive-through lane will have adequate space to queue within the project site and will not enter onto Bristol Street. Moreover, the demolition of the liquor store would also contribute to improving the onsite circulation and parking. The demolition would facilitate the relocation of an existing driveway approach, which would reduce the queuing or stacking of vehicles on MacArthur Boulevard, allow for the additional onsite parking, and accommodate improved circulation on the newly created drive aisles, improving the overall traffic safety and operations on the site, while minimizing any impacts onto other businesses.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The additional drive-through lane will not adversely affect the economic stability or future economic development of properties in the surrounding area. The site is currently developed with an existing Chick-fil-A restaurant and will remain as an established commercial use on the property. An eating establishment with an expanded drive-through service will provide an additional service and eating opportunities for the area and will provide a commercial business that generates sales tax revenue for the City.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The proposed use complies with the regulations and conditions of Chapter 41 including building heights, yards, parking and landscaping. A condition of approval has been added to the conditional use permit for a property maintenance agreement to be recorded against the property, which will ensure that the property and all improvements are properly maintained.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed eating establishment with drive-through service will not adversely affect the General Plan. The project is located in the District Center (DC-5) General Plan land use designation, which allows for commercial uses such as retail, service and eating establishment uses. Moreover, the project has been designed to be consistent with several goals and policies of the General Plan as follows:

- Goal LU-2: Land Use Needs – Provide a balance of land uses that meet Santa Ana’s diverse needs
 - Policy 2.2 Capture Local Spending – Encourage a range of commercial uses to capture a greater share of local spending and offer a range of employment opportunities.
 - Policy 2.6 Encourage Investment – Promote rehabilitation of properties and encourage increased levels of capital investment to create a safe and attractive environment.

- Policy 2.7 Business Incubator – Support land use decisions that encourage the creation, development, and retention of business in Santa Ana.

The project will allow for additional service to Santa Ana residents and visitors, thereby positively contributing to the economic viability of the area by promoting local spending, offering employment opportunities, and providing a safe workplace. In addition, the applicant is making an investment to rehabilitate the site to allow for a safe and attractive establishment by improving the circulation throughout. Lastly, the proposed improvements would allow the existing establishment to continue offering its services, thereby promoting onsite business retention.

- Goal LU-3: Compatibility of Uses – Preserve and improve the character and integrity of existing neighborhoods and districts.
 - Policy 3.4 Compatible Development – Ensure that the scale and massing of new development is compatible and harmonious with the surrounding built environment.
 - Policy 3.7 Attractive Environment – Promote a clean, safe, and creative environment for Santa Ana’s residents, workers, and visitors.

The proposed improvements would preserve the character of the existing commercial area. The scale and massing of the addition is proposed to be compatible and will maintain the current architectural style, which includes an earth tone color palette, thin stone veneer, smooth stucco finishes, canopies and trim. In addition, by maintaining the existing landscaping in place, the project provides a harmonious development and keeps all four corners of the intersection harmonious aesthetically, promoting a clean and safe environment.

- Goal EP-1: Job Creation and Retention – Foster a dynamic local economy that provides and create employment opportunities for all residents in the City
 - Policy 1.2 Attract Business – Promote new and retain existing job-producing businesses that provide living-wage employment opportunities.

The proposed improvements would help generate additional economic growth and stability in the City by further activating a prominent street corner and helping generate property and sales tax revenue. Furthermore, the improvements would help retain the existing job-producing establishment thereby providing employment opportunities to Santa Ana residents.

- Goal EP-3: Business Friendly Environment – Promote a business friendly environment where businesses thrive and build on Santa Ana’s strengths and opportunities.
 - Policy 3.7 Facilitating Investment – Promote a solution-based customer focus in order to facilitate additional development and investment in the community.
 - Policy 3.8 Comprehensive Analysis of Land Use – Pursue a balance of fiscal and qualitative community benefits when making land use decisions.

The proposed project would help the applicant to enhance their business offerings and compete with nearby full-service restaurants that offer similar services with a dual-lane drive-through. Moreover, by working on an improved site design with the applicant, staff ensured that that project provided a high level of community investment for residents, workers, and visitors in the area.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, neither a subsequent IS/MND nor an addendum to the IS/MND is required for this project. Pursuant to CEQA, if a Lead Agency needs to approve a new discretionary action or modify a previous discretionary action for a project, additional CEQA review may be necessary to update or expand upon a previously adopted Negative Declaration. Preparation of a subsequent Negative Declaration (or MND) is typically required when project changes or changed circumstances involve new significant environmental effects that were not identified in the previous Negative Declaration, or would result in a substantial increase in the severity of previously identified significant effects. Pursuant to Section of 15162 of the CEQA guidelines, a subsequent Negative Declaration only needs to be prepared when the Lead Agency determines one or more of the following, based on substantial evidence in the light of the whole record:

1. Substantial changes are proposed in the project that will require major revisions of the previous EIR or negative declaration due to the involvement of new

significant environmental effects or a substantial increase in the severity of previously identified significant effects.

2. Substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As analyzed, the project's proposed improvements would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects under the MND, and would therefore not result in substantial changes or require major revisions to the previously certified MND. The project includes a net loss of 2,364 square feet of commercial space, stemming from the demolition of the adjacent liquor store on the project site. Moreover, the proposed project would be undertaken in a way that would not result in substantial changes or require major revisions to the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Lastly, the proposed project has not resulted in: A) any new information of substantial importance that was not discussed in the previously certified MND; B) in significant effects previously examined that would be substantially more severe than shown in the previous MND; C) mitigation measures or alternatives previously found not to be feasible; or D) mitigation measures or alternatives which are considerably different from those analyzed in the previous MND.

Given the above analysis, and in accordance with the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 exemption applies to 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 existing or former use. The project proposes a 630-square-foot addition to the

existing eating establishment, which is less than 50-percent of the total gross floor area of the existing structure. Moreover, the project proposes negligible expansion of the existing establishment as the project consists of relocation a portion of the drive-through entrance and creation of a longer dual lane approach, increasing the queuing capacity. As such, a Notice of Exemption, Environmental Review No. 2021-86, will be filed for this project.

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 modification to Conditional Use Permit No. 2003-15 (No. 2003-15-MOD-1), as conditioned in Exhibit A, attached hereto and incorporated herein for the project located at 3601 South Bristol Street. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: the Request for Planning Commission Action dated December 12, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 12th day of December, 2022.

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Bao Pham
Chairperson

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

By: John M. Funk
John M. Funk
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Chelsea Shafer, Acting Recording Secretary Recording Secretary, do hereby attest to and certify the attached Resolution No. 2022-XXX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on December 12, 2022.

Date: _____

Acting Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2003-15-MOD-1

Conditional Use Permit No. 2003-15-MOD-1 for expansion of an existing drive-through lane 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, the following conditions of approval shall be met:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. All site improvements must conform to Development Project (DP) Review No. 2021-24 and in accordance with the plans attached to the staff report documenting the approved scope of the project.
2. All Conditions of Approval approved by the City of Santa Ana City Council on August 4, 2003, for Conditional Use Permit No. 2003-15, shall remain in effect. In the event of conflicting requirements as part of the Conditions of Approval, DP No. 2021-24 and Conditional Use Permit No. 2003-15-MOD-1 shall take precedence.
3. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or the conditional use permit must be amended.
4. Prior to the issuance of a Building Permit, the Applicant shall submit a landscape and irrigation plan for the entire site to the Planning Division for review and approval. The landscape and irrigation shall comply with the zoning district's landscape standards, the Water Efficient Landscape Ordinance (WELO), and the Citywide Design Guidelines. The landscape plan shall also include landscaping throughout the perimeter extended drive-through and new parking area.
5. Prior to the issuance of a Building Permit, the Applicant shall submit a written approval from the Orange County Sanitation District (OCSD) stating that Chick-fil-A may stay connected into their sewer system. As part of the continued sewer connection, the proposed trash enclosure shall not have a floor drain system that connects to the sewer, in OCSD's Wastewater Discharge Regulations Ordinance No. OCSD-53.
6. Violations of the Conditional Use Permit as contained in Section 41-647.5 of the Santa Ana Municipal Code will be grounds for permit suspension and/or revocation as described in Section 41-651 of the Santa Ana Municipal Code.

7. Post contact information for onsite manager at business entry, to report noise/trash/traffic/etc. problems.
8. Prior to the issuance of a Building Permit, a Property Maintenance Agreement shall 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 on or about the property within 50 feet thereof including the public right-of-way; 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, 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