

RESOLUTION NO. 2022-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING VARIANCE NO. 2021-02 AS CONDITIONED TO ALLOW ADDITIONAL OFF-CENTERED WALL SIGNAGE AND NUMBER OF SIGNS ALLOWED AT THE NORTHGATE MARKET BUILDING AT THE PROPERTY LOCATED AT 2603 WEST WESTMINSTER AVENUE.

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. Kevin Le ("Applicant"), representing property owner Northgate Gonzalez, is requesting approval of Variance No. 2021-02 to allow relief from the sign placement requirements and exceed the number of permissible signage at 2603 Westminster Avenue.
- B. Pursuant to Santa Ana Municipal Code ("SAMC") Section 41-863, one wall sign is permissible on the primary elevation that can be placed above the entryway and two secondary elevation signs. As proposed, the applicant is requesting six primary elevation signs to be spread out across the primary elevation and a secondary elevation identification sign for a total of seven wall signs, thus requiring approval of the subject variance.
- C. On February 28, 2022, the Planning Commission held a duly noticed public hearing on Variance No. 2021-02 to allow relief from the sign placement requirements and exceed the number of permissible signage.
- D. The Planning Commission determines that the following findings, which must be established in order to grant this Variance pursuant to SAMC Section 41-638, have been established for Variance No. 2021-2 to allow additional off-centered signage on the building façade:
  1. That because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges not otherwise at variance with the intent and purpose of the provisions of this chapter.

The subject site has special circumstances related to the design and shape of the existing building where strict application of the SAMC zoning code would deprive the subject property of privileges afforded to other properties within the

City. The proposed existing building features a tile canopy above the entryway on which the sign would be located with strict application of the SAMC. Such placement would deprive the applicant from providing adequate signage and limit visibility from Westminster Avenue. Furthermore, additional signage is essential to ensure adequate advertising for the specialized departments within the grocery store and subtenant Prospera.

2. That the granting of a variance is necessary for the preservation and enjoyment of one or more substantial property rights.

The granting of the variance is necessary for the preservation and enjoyment of the substantial property rights. Strict application of the SAMC would require that the applicant place the wall sign at the canopy over the entry however, such placement would not afford the grocery store sufficient visibility from Westminster Avenue; placement west of the entry would provide for better visibility. Furthermore, the additional signage is necessary to advertise the goods and services offered that are unique to the new Northgate Market.

3. That the granting of a variance will not be materially detrimental to the public welfare or injurious to surrounding property.

The granting of the variance will not be detrimental to the public or surrounding properties, as the design would complement the proposed façade modifications being processed under a separate application. Moreover, the additional signage advertising goods and services would be scaled down in size and minimize any potential visual intrusion and overcrowding of signage on the primary elevation. Additionally, the signage would face Westminster Avenue and other commercial centers and is not anticipated to impact any residential properties.

4. That the granting of a variance will not adversely affect the General Plan of the City.

The granting of the variance would not adversely affect the City's General Plan as the corresponding land use designation General Commercial (GC) allows signage in conjunction with the permitted uses. Additionally, approval the proposed signage is consistent with several goals of the Land Use Element of the General Plan. Goal 1 promotes a balance of land uses to address community needs, which the additional advertising would promote. In addition, approval of the variance would enhance the City's economic and fiscal viability by bringing awareness to the community of the

available services at the Northgate Market through the proposed signage.

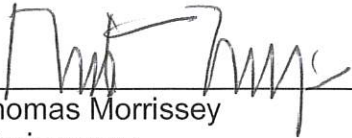
**Section 2.** In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, 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. Based on this analysis, a Notice of Exemption, Environmental Review No. 2021-115 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 Variance No. 2021-2, as conditioned in Exhibit A, attached hereto and incorporated herein for the project located at 2603 W. Westminster Avenue. 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 February 28, 2022, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.

ADOPTED this 28<sup>th</sup> day of February 2022 by the following vote:

AYES: Commissioners: CALDERON, MCLOUGHLIN, MORRISSEY, PHAM,  
RAMOS, WOO (6)  
NOES: Commissioners:  
ABSENT: Commissioners: ALDERETE (1)  
ABSTENTIONS: Commissioners:

  
Thomas Morrissey  
Chairperson

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

By:   
\_\_\_\_\_  
John M. Funk  
Senior Assistant City Attorney

#### CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Christina Leonard, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2022-07 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on February 28, 2022.

Date: 3/14/22

  
\_\_\_\_\_  
Recording Secretary

## EXHIBIT A

### **Conditions of Approval for Variance No. 2021-02**

Variance No. 2021-02 is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code and all other applicable regulations.

The Applicant must comply in full 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. The Applicant must comply with all conditions and requirements of the Development Review Committee for the Development Project (DP) No. 2021-26.
2. The proposed facility shall be maintained as per approved plans and any existing landscaping shall be enhanced and well maintained. Any damage to existing structures, walls, parking areas, or landscaping must be repaired.
3. Any amendment to this variance must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the variance must be amended.
4. The proposed signs will be limited to the location and size of the approved plans.
5. The east trellis area is to be reserved in perpetuity as an ADA path of travel and not to be used as cart storage. **Added by Planning Commission February 28, 2022.**
6. Prior to issuance of the Certificate of Occupancy, the property shall be brought into full maintenance compliance with all applicable SAMC standards. Maintenance shall include, but is not limited to: the repair and upkeep of the property; cleanup of trash and debris; repair and upkeep of any damaged and/or weathered components of the historic building (e.g., siding, windows, historic features); repair and upkeep of exterior paint; parking striping, lighting and irrigation fixtures; landscaping and related landscape, furnishing, and hardscape improvements.
7. The proposed facility shall be maintained on an ongoing basis as per approved plans and any existing landscaping shall be enhanced and well maintained. Any damage to existing structures, walls, parking areas, or landscaping must be repaired.

8. Prior to 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 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, 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 issuance of final approval for any construction permit related to this entitlement.

#### Public Works Agency

1. Final approved plans shall depict and note all the affected parcels that are part of this project. Additional comments may follow if additional parcels are included.
2. Final approved plans shall depict and note the proposed Lot Line Adjustment lines (existing and future).
3. Plans shall identify on a separate sheet the proposed parcel lines, common areas, number of parcels and letter parcels.
4. The applicant shall provide a copy of the easement agreement for reciprocal ingress/egress access, parking, and drainage as necessary.
5. Final approved plans shall depict and dimension all existing topography, within the public right-of-way, along the property frontage (i.e., trees, driveway approach, street signs, streetlights, sidewalk and street widths, etc.).
6. Final approved plans shall depict and note the installation of all public utilities required to service the project site (i.e., new sewer lateral, water laterals, fire service, irrigation laterals and storm drain). Additional paving requirements may be identified during street improvement plan check if excavation is needed for any new utility service(s).
7. Final approved plans shall depict and note all existing easements, per the current title report. Submit copies of all the referenced and supporting documents defining each easement. Clarify easements on the site plan and/or Alta/ACSM Land Title

Survey. Structures are not allowed over existing easements or along a driving aisle. The rights of the easement holder shall remain in effect without interference. If a structure is proposed to be built over an easement, a signed non-interference letter from the easement holder is required or easement holder must quitclaim rights to the easement. An updated title report will be required if quitclaim process is selected. The quitclaim(s) need(s) to be submitted to the Public Works Agency prior to any permit issuance.

8. Final approved plans shall depict a 15-foot by 15-foot sight distance triangle area at the vehicular site access locations (See Exhibit A). The height of proposed back flow device may not exceed 2.5 feet.
9. Final approved plans shall depict and note the removal and reconstruction of the easterly driveway on Westminster Avenue, per City Standards, (W=28' min., A=38' min., X=4'). The driveways must be located a minimum of 10' away from any utility facility, such as power poles, streetlights, catch basins, etc.
10. Final approved plans shall depict the proposed planter(s) in alignment with the new/existing driveway widths along Westminster Avenue.
11. Final approved plans shall depict and note grinding and capping of a minimum of 2"-3" of the existing AC pavement on Westminster Avenue along project frontage for curb lane.
12. Final approved plans shall depict the safe and efficient access of trash vehicles to trash receptacles. The following are the guidelines and the minimum requirements:
  - Depict and note the exact location(s) of the trash and recycling receptacles.
  - The project shall comply with all requirements specified in SAMC Sec. 16-37.
  - Minimum 40' x 16' wide staging area shall be available on service days from 6 a.m. to 6 p.m.
  - Minimum vertical clearance of 25' at the staging area for bin service clearance.
  - Minimum 13' vertical clearance for scout truck.
  - Per CALGreen, all commercial establishments must have adequate space in trash enclosures for three waste streams - trash, recycling, and food waste. Food waste service is offered in 2-yard bins.
  - All staging areas are to be onsite. No street staging is permitted.
  - 42' on a 90-degree turn radius
  - **All driveway and staging areas must be able to sustain a minimum gross weight of 60,000 lbs. per vehicle.**
  - Maximum size of bin shall be 4 cubic yards.
  - Depict the trash trucks' turning radius at all proposed internal corners.
  - Provide complete circulation for trash trucks, backing up into the streets is not allowed for safety reasons.
  - **All items must be noted on the final site plan.**



In addition to the items above, the applicant shall provide a copy of the will-serve letter obtained from Waste Management, Inc.

13. Prior to Building plan check submittal, the applicant shall submit a preliminary evaluation of surface drainage showing the direction and means of flow to the adjacent streets and/or on/off site storm drain facilities. Include the estimated volumetric flow (Q) in each direction.
14. Final approved plans shall depict and note the drainage pattern of this site. Cross-lot drainage is allowed only by the means of recording a covenant, reviewed and approved by the City of Santa Ana. Should a Lot Merger be recorded, if required by the Planning and Building Agency, a Covenant will be unnecessary.
15. The applicant shall submit preliminary surface drainage/utility plan that depicts all applicable "Site Design," structural "Source Control," and "Treatment Control" Best Management Practices (BMPs) in accordance with the Orange County Drainage Area Management Plan (DAMP) and the City of Santa Ana Local Implementation Plan (LIP). Site drainage should go to the landscape swale and should not be in conflict with the landscape plantings.
16. Final approved plans shall contain the note "This site will be designed and constructed in accordance with the California Regional Water Quality Control Board Santa Ana Region Order No. R8-2009-0030 discharge requirements (MS4 Permit)."

#### Police Department

1. The applicant shall install burglary bars at any rooftop ventilation openings or air conditioning return and supply openings that exceed ninety-six square inches.