

RESOLUTION NO. 2024-01

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SANTA ANA APPROVING MINOR EXCEPTION NO. 2024-01, AS CONDITIONED, TO EXCEED THE MAXIMUM ALLOWABLE BUILDING HEIGHT OF 35 FEET, BY NO MORE THAN TWENTY-FIVE PERCENT, FOR A TOTAL HEIGHT OF 43 FEET AND 9 INCHES, FOR THE DEVELOPMENT OF A NEW INDUSTRIAL BUILDING AT 300 AND 322 EAST DYER ROAD (APN: 411-021-01 AND 411-021-02)

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

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

- A. Hugh Seifert and Geoff Garland, with IDS Real Estate Group (Applicant), representing Dyer Industrial, LLC (Property Owner), are requesting approval of Minor Exception No. 2024-01, to exceed the maximum allowable building height of 35 feet, by no more than twenty-five percent, for a total height of 43 feet and 9 inches, for the development of a new industrial building at 300 and 322 East Dyer Road.
- B. Pursuant to Section 41-474 of the Santa Ana Municipal Code (SAMC), buildings in the Light Industrial (M-1) zoning district are limited to a maximum height of 35 feet.
- C. Pursuant to Section 41-632 (3)(d) of the SAMC, applications may be made to obtain a waiver or modification to the maximum allowable building height, not to exceed more than twenty-five percent of the maximum height permitted.
- D. Pursuant Section 41-638 SAMC, the Zoning Administrator is authorized to review and approve minor exceptions from the development standards set forth by the Santa Ana Municipal Code.
- E. On August 21, 2024, the Zoning Administrator held a duly noticed public hearing on Minor Exception No. 2024-01.
- F. The Zoning Administrator of the City of Santa Ana determines that the following findings, which must be established in order to grant a Minor Exception pursuant to SAMC Section 41-638, have been established for

Minor Exception No. 2024-01 to exceed the maximum allowable height of 35 feet, by no more than twenty-five percent, for a total allowable height of 43 feet and 9 inches:

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 project site has special circumstances related to its location, surroundings and topography. The strict application of the maximum height building standard would deprive the applicant of the ability to develop the property with a modern warehouse/distribution use, which is a permitted use in the M-1 zone, in that, absent the requested height increase, insufficient "clear height" (i.e., height from the floor to the bottom of the lowest hanging item on the ceiling) can be achieved to develop a commercially viable warehouse/distribution use. This is further exacerbated due to special circumstances applicable to the subject property, in that the property's soil conditions require retaining storm water on site (rather than allowing for on-site infiltration), which, because of the property's topography and relatively small size, require elevating the finished floor height to achieve positive drainage away from the building and toward storm water basins.

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

The granting of this minor exception is necessary for the preservation and enjoyment of substantial property rights. The approval of the minor exception will allow the property owner to maintain the right to develop and utilize their property for warehouse distribution uses, a right enjoyed by other industrial property owners in the M-1 zone. Absent the minor exception, the applicant would be deprived of the ability to develop the property with a commercially viable warehouse/distribution use. Moreover, exceeding the maximum height would allow future businesses/tenants to comply with the operational standards of Section 41-473 of the SAMC, which require all equipment and activity to be conducted in such a manner as to not have detrimental effects on permitted adjacent uses. The area surrounding the subject site is primarily industrial with several commercial businesses,

and having the installation of a larger machine within the building will reduce noise and vibration impacts onto the adjacent properties.

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

The granting of this minor exception will not be detrimental to the public or surrounding properties. The height increase authorized by the exception will only allow the applicant to develop the property with a warehouse/distribution use, which is a typical use for this area. Further, the request will not be materially detrimental to the public welfare or injurious to surrounding property in that surrounding uses are industrial in nature and several such uses also exceed the 35-foot height limit (e.g., 220 E. Dyer Road). In addition, approval of the minor exception will not affect the type or intensity of the use on the property and the property will be required to comply all other development standards, in order to ensure that the development of the property does not injure or detrimentally affect surrounding properties. Lastly, the subject site is identified to be just outside of the height exempt boundary by roughly a quarter-mile. The properties located on the east and South of Halladay Street, are located inside the height exempt area, which allows unlimited building height. If the subject property were located within the height exemption area, the proposed building height of 43-feet and nine-inches would be permitted.

4. That the granting of a minor exception will not adversely affect the General Plan of the city.

The subject property has a General Plan Land Use Designation of Industrial (IND) which is implemented with the Light Industrial (M-1) zoning designation. The granting of the minor exception will not adversely affect the City's General Plan in that the exception is consistent with Land Use Element policies LU-1.1 and LU-3.4, which encourage compatible development and make it a policy to ensure that the scale and massing of new development is compatible and harmonious with the surrounding built environment. The requested minor exception is consistent with these policies in that it will allow the property to be developed with buildings similar in scale and massing to surrounding uses in the M-1 zone, some of which also exceed the 35-foot height limit, and in that it will allow the property to be developed with warehouse/distribution uses, which is a permitted use in the

M-1 zone and which is compatible and harmonious with the other industrial uses in the surrounding area.

The minor exception would also further policy LU-4.2 of the Land Use Element, which encourages quality architecture, street trees, and landscaping, and policy UD-2.1 of the Urban Design element, which encourages creative architectural design and sustainable street scape treatments, in that the minor exception will allow the applicant to replace an outdated set of limited-function industrial buildings with an attractive industrial project that will increase setbacks from the street and adjacent properties, expand/enhance the overall property landscaping and street scape improvements.

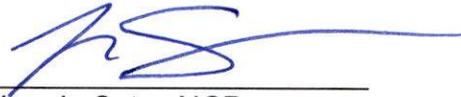
Section 2. Pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is exempt from further review, pursuant to Section 15332 (Class 32) of the CEQA Guidelines (In-Fill Development Projects), because the project is consistent with the applicable general plan designation and applicable general plan policies, as well as with applicable zoning designation and regulations. Moreover, the proposed development occurs within the City limits on a project site of no more than five acres; the project site has no value as habitat for endangered, rare or threatened species; approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all required utilities and public services. The above-mentioned analysis and use of a Class 32 categorical exemption is substantiated by the environmental analysis provided for this project. Based on this analysis, Notice of Exemption, Environmental Review No. 2023-83 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, and other and 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, which approval will not be unreasonably withheld, 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 Zoning Administrator of the City of Santa Ana, after conducting the public hearing, hereby approves Minor Exception No. 2024-01 as conditioned in "Exhibit A" attached hereto and incorporated as though fully set forth herein for the project located at 300 and 322 E. Dyer Road. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for Zoning Administrator Action dated August 21, 2024, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 21st day of August 2024 by the Zoning Administrator.



Ricardo Soto, AICP
Zoning Administrator

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

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, NUVIA OCAMPO, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2024-01 to be the original resolution adopted by the Zoning Administrator of the City of Santa Ana on August 21, 2024.

Date: 8/21/2024

Nuvia Ocampo
Recording Secretary

EXHIBIT A

Conditions for Approval for Minor Exception No. 2024-01

Minor Exception No. 2024-01 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, they 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 minor exception.

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 minor exception.

A. Planning Division Conditions:

1. All proposed site improvements must conform to Development Project Review (DP No. 2023-24) and the staff report exhibit.
2. The property owner shall satisfy all site improvement requirements identified by the City's Development Review Committee (DRC) as part of Development Project (DP) DP No. 2023-24, including but not limited to, the Public Works – Water Resources Division comments
3. Any amendment to this minor exception, 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 minor exception must be amended.
4. Prior to submittal into building plan check, a full landscape and irrigation plan is to be submitted for review and approval. The landscape plan shall conform to the commercial landscape standards, Citywide Design Guidelines, and the City's Water Efficient Landscape Ordinance.
5. Prior to issuance of a building permit for any onsite grading activities, the applicant shall provide the Planning Division a proposed construction plan with details on truck routes used for construction traffic and an overall construction schedule. The truck routes shall avoid passage through neighborhoods with sensitive land uses such as school, parks, and residential land uses.
6. The idling of trucks and passenger vehicles on and in the vicinity of the property, including on adjacent streets, is prohibited.

7. All activities shall be conducted entirely within the interior of the building. Outdoor activities shall be prohibited unless otherwise permitted by the City of Santa Ana or per Santa Ana Municipal Code Section 41-195.5.
8. Outdoor storage must be screened by solid walls, pursuant to Santa Ana Municipal Code Section 41-473.
9. Contact information for an onsite manager or other individual responsible for the daily operations of the facility shall be posted in a prominent location at the front entry in the event that noise, traffic, and/or parking complaints need reporting.
10. Administrative offices shall not be subleased for uses not related to the warehousing and distribution facility.
11. Within ninety (90) days of approval of this minor exception, 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, Developer (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 Property 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 Developer 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 Property 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 Property Maintenance Agreement.

(g) The Property 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.